2020
CUMULATIVE SUPPLEMENT
TO
MISSISSIPPI CODE

1972 ANNOTATED

Issued December 2020

CONTAINING PERMANENT PUBLIC STATUTES OF MISSISSIPPI
ENACTED THROUGH THE 2020 REGULAR SESSION
OF THE LEGISLATURE

PUBLISHED BY AUTHORITY OF
THE LEGISLATURE

SUPPLEMENTING

Volume 20

Titles 91 to 95

(As Revised 2018)

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ISBN 978-0-327-09628-3 (Code set)
ISBN 978-1-5221-5425-9 (Volume 20)

LexisNexis

Matthew Bender & Company, Inc.

555 Middle Creek Parkway, Colorado Springs, CO 80921

www.lexisnexis.com

(Pub.44510)

User's Guide

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the Mississippi Code of 1972 Annotated, a User's Guide has been included in the main volume. This guide contains comments and information on the many features found within the Code intended to increase the usefulness of the Code to the user.

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PUBLISHER'S FOREWORD

Statutes

The 2020 Supplement to the Mississippi Code of 1972 Annotated reflects the statute law of Mississippi as amended by the Mississippi Legislature through the end of the 2020 Regular Legislative Session.

Annotations

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

Southern Reporter, 3rd Series
United States Supreme Court Reports
Supreme Court Reporter
United States Supreme Court Reports, Lawyers' Edition, 2nd Series
Federal Reporter, 3rd Series
Federal Supplement, 3rd Series
Federal Rules Decisions
Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

American Law Reports, 6th Series
American Law Reports, Federal 2nd
Mississippi College Law Review
Mississippi Law Journal

Finally, published opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

Amendment Notes

Amendment notes detail how the new legislation affects existing sections.

Editor's Notes

Editor's notes summarize subject matter and legislative history of repealed sections, provide information as to portions of legislative acts that have not been codified, or explain other pertinent information.

Joint Legislative Committee Notes

Joint Legislative Committee notes explain codification decisions and corrections of Code errors made by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation.

Tables

The Statutory Tables volume adds tables showing disposition of legislative acts through the 2020 Regular Session.

Index

The comprehensive Index to the Mississippi Code of 1972 Annotated is replaced annually, and we welcome customer suggestions. The foreword to the Index explains our indexing principles, suggests guidelines for successful index research, and provides methods for contacting indexers.

Acknowledgements

The publisher wishes to acknowledge the cooperation and assistance rendered by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation, as well as the offices of the Attorney General and Secretary of State, in the preparation of this supplement.

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December 2020 LexisNexis

SCHEDULE OF NEW SECTIONS

Added in this Supplement

TITLE 91. TRUSTS AND ESTATES

CHAPTER 7. Executors and Administrators

GENERAL PROVISIONS

Sec.	
91-7-90.	Order of abatement for shares of distributees of deceased's property.

NONRESIDENT DECEDENTS

91-7-501.	Definitions.
91-7-503.	Settlement of debt to estate of nonresident decedent outside of administration.
91-7-505.	Release of debtor for good faith payment or delivery on basis of proof of authority and affidavit.
91-7-507.	Settlement of debt to estate of nonresident decedent outside of administration prohibited upon resident creditor's notice.
91-7-509.	Domiciliary foreign personal representative may file authenticated copies of appointment under certain circumstances.
91-7-511.	Domiciliary foreign personal representative authorized to exercise powers of local personal representative as to Mississippi assets.
91-7-513.	Effect of application or petition for local administration of estate.
91-7-515.	Applicability of Sections 91-7-501 through 91-7-523 to nonresident decedents.
91-7-517.	Personal jurisdiction of courts over foreign personal representative.
91-7-519.	Foreign personal representative subject to jurisdiction of Mississippi courts to the same extent as decedent was immediately prior to death.
91-7-521.	Service of process.
91-7-523.	Effect of a foreign adjudication.

CHAPTER 8. Mississippi Uniform Trust Code

Article 5. CREDITOR'S CLAIMS, SPENDTHRIFT AND DISCRETIONARY TRUSTS.

91-8-501.	Application of Article 5; rights of beneficiary's creditor or assignee.
91-8-502.	Spendthrift provision.
91-8-503.	Discretionary interests; effect thereof.
91-8-504.	Creditors' claims against settlor.
91-8-505.	Distributions relative to support, mandatory and certain remainder interests.
91-8-506.	Personal obligations of trustee.
91-8-507.	Removal or replacement power over trustee or other fiduciary not reachable by holder's creditors; interests of beneficiary who is also a trustee or other fiduciary not reachable.
91-8-508.	Judicial foreclosure of beneficial interests, powers of appointment, and reserved powers prohibited; certain reaches prohibited.

CHAPTER 25. Mississippi Uniform Estate Tax Apportionment Act.

91-25-1.	Short title.
91-25-3.	Definitions.

91-25-5.	Apportionment by will or other dispositive instrument.
91-25-7.	Statutory apportionment of estate taxes.
91-25-9.	Credits and deferrals.
91-25-11.	Insulated property; advancement of tax.
91-25-13.	Apportionment and recapture of special elective benefits.
91-25-15.	Securing payment of estate tax from property in possession of fiduciary.
91-25-17.	Collection of estate tax by fiduciary.
91-25-19.	Right of reimbursement.
91-25-21.	Action to determine or enforce chapter.
91-25-23.	Uniformity of application and construction.
91-25-25.	Severability.
91-25-27.	Delayed application.

CHAPTER 27. Mississippi Real Property Transfer-on-Death Act

91-27-1.	Short title.
91-27-3.	Definitions.
91-27-5.	Applicability.
91-27-7.	Nonexclusivity.
91-27-9.	Transfer-on-death deed authorized.
91-27-11.	Transfer-on-death deed revocable.
91-27-13.	Transfer-on-death deed nontestamentary.
91-27-15.	Capacity of transferor.
91-27-17.	Requirements.
91-27-19.	Notice, delivery, acceptance, consideration not required.
91-27-21.	Revocation by instrument authorized; revocation by act not permitted.
91-27-23.	Effect of transfer-on-death deed during transferor's life.
91-27-25.	Effect of subsequent conveyance on transfer-on-death deed.
91-27-27.	Effect of transfer-on-death deed at transferor's death.
91-27-29.	Transfer-on-death deed property subject to liens and encumbrances at transferor's death; creditors' claims.
91-27-31.	Disclaimer.
91-27-33.	Optional form for transfer-on-death deed.
91-27-35.	Optional form of revocation.
91-27-37.	Relation to Electronic Signatures in Global and National Commerce Act.

CHAPTER 29. Effect of Dissolution of Marriage.

91-29-1.	Will provisions made before dissolution of marriage.
91-29-3.	Treatment of decedent's former spouse.
91-29-5.	Definitions.
91-29-7.	Revocation of certain nontestamentary transfers; treatment of former spouse as beneficiary under certain policies or plans.
91-29-9.	Effect of revocation.
91-29-11.	Liability of certain purchasers or recipients of certain payments, benefits, or property.
91-29-13.	Liability of former spouse for certain payments, benefits or property.
91-29-15.	Certain trusts with divorced individuals as joint settlors.
91-29-17.	Designation of former spouse or relative of former spouse on certain multiple-party accounts.
91-29-19.	Determination of consanguinity.
91-29-23.	Pre-decree designation of ex-spouse as beneficiary of life insurance.
91-29-25.	Pre-decree designation of ex-spouse as beneficiary in retirement benefits and other financial plans.

CHAPTER 31. Uniform Partition of Heir Property.

91-31-1.	Short title.

91-31-3.	Definitions.
91-31-5.	Applicability; relation to other law.
91-31-7.	Service; notice by posting.
91-31-9.	Masters.
91-31-11.	Determination of value.
91-31-13.	Cotenant buyout.
91-31-15.	Partition alternatives.
91-31-17.	Considerations for partition in kind.
91-31-19.	Open-market sale, sealed bids or auction.
91-31-21.	Report of open-market sale.
91-31-23.	Uniformity of application and construction.
91-31-25.	Relation to electronic signatures in global and national commerce act.

TITLE 93. DOMESTIC RELATIONS

CHAPTER 20. GUARDIANSHIP AND CONSERVATORSHIP

ARTICLE 1. GENERAL PROVISIONS

93-20-101.	Short title.
93-20-102.	Definitions.
93-20-103.	Supplemental principles of law and equity applicable.
93-20-104.	Subject-matter jurisdiction.
93-20-105.	Transfer of proceeding.
93-20-106.	Venue.
93-20-107.	Practice in court.
93-20-108.	Letters of guardianship or conservatorship.
93-20-109.	Effect of acceptance of appointment.
93-20-110.	Co-guardian; co-conservator.
93-20-111.	Judicial appointment of successor guardian or successor conservator.
93-20-112.	Effect of death, removal, or resignation of guardian or conservator.
93-20-113.	Notice of hearing generally.
93-20-114.	Waiver of notice.
93-20-115.	Guardian ad litem.
93-20-116.	Request for notice.
93-20-117.	Disclosure of bankruptcy or criminal history.
93-20-118.	Compensation and expenses; in general.
93-20-119.	Compensation of guardian or conservator.
93-20-120.	Liability of guardian or conservator for act of ward.
93-20-121.	Petition after appointment for instruction or ratification.
93-20-122.	Third-party acceptance of authority of guardian or conservator.
93-20-123.	Temporary substitute guardian or conservator.
93-20-124.	Registration of order; effect.
93-20-125.	Transition provisions.

ARTICLE 2. GUARDIANSHIP OF MINOR

93-20-201.	Basis for appointment of guardian for minor.
93-20-202.	Petition for appointment of guardian for minor.
93-20-203.	Notice of hearing for appointment of guardian for minor.
93-20-204.	Attorney for minor.
93-20-205.	Rights at hearing.
93-20-206.	Order on appointment; limited guardianship for minor.
93-20-207.	Emergency guardian for minor.
93-20-208.	Duties of guardian for minor.
93-20-209.	Powers of guardian for minor.
93-20-210.	Removal of guardian for minor; termination of guardianship; appointment of successor.

ARTICLE 3. GUARDIANSHIP OF ADULT

SEC.	
93-20-301.	Basis for appointment of guardian for adult.
93-20-302.	Petition for appointment of guardian for adult.
93-20-303.	Notice of hearing for appointment of guardian for adult.
93-20-304.	Appointment of guardian ad litem.
93-20-305.	Professional evaluation.
93-20-306.	Rights at hearing.
93-20-307.	Confidentiality of records.
93-20-308.	Who may be guardian for adult.
93-20-309.	Order on appointment of guardian.
93-20-310.	Notice of order of appointment; rights.
93-20-311.	Emergency guardian for adult.
93-20-312.	Duties of guardian for adult.
93-20-313.	Powers of guardian for adult.
93-20-314.	Special limitations on guardian's power.
93-20-315.	Guardian's plan.
93-20-316.	Guardian's well-being report; monitoring of guardianship.
93-20-317.	Removal of guardian for adult; appointment of successor.
93-20-318.	Termination or modification of guardianship for adult.

ARTICLE 4. CONSERVATORSHIP

93-20-401.	Basis for appointment of conservator.
93-20-402.	Petition for appointment of conservator; notice.
93-20-403.	Notice and hearing for appointment of conservator.
93-20-404.	Order to preserve or apply property while proceeding pending.
93-20-405.	Appointment and role of guardian ad litem.
93-20-406.	Appointment of attorney.
93-20-407.	Professional evaluation.
93-20-408.	Rights at hearing.
93-20-409.	Confidentiality of records.
93-20-410.	Who may be conservator.
93-20-411.	Order on appointment of conservator.
93-20-412.	Notice of order of appointment; rights.
93-20-413.	Emergency conservator.
93-20-414.	Powers of conservator requiring court approval.
93-20-415.	Petition for order after appointment.
93-20-416.	Bond; oath; waiver; financial institutions; alternative asset-protection arrangement.
93-20-417.	Terms and requirements of bond.
93-20-418.	Duties of conservator.
93-20-419.	Conservator's plan.
93-20-420.	Inventory; records.
93-20-421.	Administrative powers of conservator not requiring court approval.
93-20-422.	Distribution from conservatorship estate.
93-20-423.	Conservator's report and accounting; monitoring.
93-20-424.	Attempted transfer of property by the ward.
93-20-425.	Transaction involving conflict of interest.
93-20-426.	Protection of person dealing with conservator.
93-20-427.	Presentation and allowance of claim.
93-20-428.	Personal liability of conservator.
93-20-429.	Removal of conservator; appointment of successor.
93-20-430.	Termination or modification of conservatorship.
93-20-431.	Transfer for benefit of minor without appointment of conservator.

CHAPTER 21. Protection from Domestic Abuse

Article 1. PROTECTION FROM DOMESTIC ABUSE LAW

Sec.	
93-21-15.1.	Appeal of temporary or final domestic abuse protection order.

Article 3. DOMESTIC VIOLENCE SHELTERS.

93-21-125.	Communications of victims of domestic violence, sexual assault, stalking and human trafficking with advocates deemed confidential.

MISSISSIPPI CODE
1972
ANNOTATED

VOLUME TWENTY

TITLE 91.

TRUSTS AND ESTATES

Chapter 1.	Descent and Distribution.	91-1-1
Chapter 5.	Wills and Testaments.	91-5-1
Chapter 7.	Executors and Administrators.	91-7-1
Chapter 8.	Mississippi Uniform Trust Code.	91-8-101
Chapter 9.	Trusts and Trustees.	91-9-1
Chapter 17.	Mississippi Principal and Income Act of 2013.	91-17-1
Chapter 25.	Mississippi Uniform Estate Tax Apportionment Act.	91-25-1
Chapter 27.	Mississippi Real Property Transfer-On-Death Act.	91-27-1
Chapter 29.	Effect of Dissolution of Marriage.	91-29-1
Chapter 31.	Uniform Partition of Heir Property.	91-31-1

CHAPTER 1.

DESCENT AND DISTRIBUTION

Sec.
91-1-1. Territorial application.

§ 91-1-1. Territorial application.

This chapter applies to the property of decedents domiciled in this state and real property of nonresidents located in this state.

HISTORY: Codes, 1857, ch. 60, art. 110; 1871, § 1950; 1880, § 1270; 1892, § 1542; 1906, § 1648; Hemingway's 1917, § 1380; 1930, § 1401; 1942, § 467; Laws, 2020, ch. 343, § 1, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment rewrote the section, which read: "All personal property situated in this state shall descend and be distributed according to the laws of this state regulating the descent and distribution of such property, regardless of all marital rights which may have accrued in other states, and notwithstanding the domicile of the deceased may have been in another state, and whether the heirs or persons entitled to distribution be in this state or not. The widow of such deceased person shall take her share in the personal estate according to the laws of this state."

§ 91-1-15. Descent among illegitimates; definitions.

JUDICIAL DECISIONS

ANALYSIS

3. Inheritance by illegitimates.
4. Inheritance through illegitimates.

3. Inheritance by illegitimates.

Deceased child's father could not recover wrongful death benefits from the child because the father failed to establish the requirements of the statute; the father never met child or introduced the child to his family, he was not listed on the child's birth certificate, he neglected to support the child, and he denied paternity and challenged the mother's efforts to obtain child support and social security benefits from him. Perkins v. Nelson (In re Estate of Nelson), 266 So. 3d 1008, 2018 Miss. App. LEXIS 350 (Miss. Ct. App. 2018).

Chancellor did not err in determining that a father's children could not recover wrongful death benefits from his deceased child because the father did not meet the requirements of the statute; the deceased child's sole wrongful death beneficiary was his mother, and she was entitled to the settlement proceeds deriving from his wrongful death. Perkins v. Nelson (In re Estate of Nelson), 266 So. 3d 1008, 2018 Miss. App. LEXIS 350 (Miss. Ct. App. 2018).

4. Inheritance through illegitimates.

Doctrine of unclean hands was inapplicable because a mother's failure to give a father notice of a wrongful death acton did not amount to a willful act that transgressed equitable standards of conduct; the mother and the father were never married, the father consistently denied paternity of the deceased child, and the father failed to meet the statutory requirements to constitute a wrongful death beneficiary of the child. Perkins v. Nelson (In re Estate of Nelson), 266 So. 3d 1008, 2018 Miss. App. LEXIS 350 (Miss. Ct. App. 2018).

Father and his children failed to provide the Attorney General with notice of their constitutional challenge at the trial level because they first notified the Attorney General of their challenge to the constitutionality of the statute in their notice of appeal; thus, the father and children did not comply with the requirements of Miss. R. Civ. P. 24(d), and their challenge to the constitutionality of the wrongful death statute's incorporation of § 91-1-15(3) was procedurally barred. Perkins v. Nelson (In re Estate of Nelson), 266 So. 3d 1008, 2018 Miss. App. LEXIS 350 (Miss. Ct. App. 2018).

§ 91-1-25. Person who has killed another not to inherit from him.

JUDICIAL DECISIONS

1. In general.

Public Employees' Retirement System (PERS) Board of Trustees did not err in denying the claim a deceased PERS member's sister because the member's husband was entitled to lifetime spousal survivor benefits, notwithstanding the fact he was convicted of aggravated driving under the influence in connection with the member's death; the husband did not willfully cause the member's death under the slayer statutes, and he had been married to the member for over one year. Hicks v. Public Employees' Ret. Sys. of Miss., 282 So. 3d 1204, 2019 Miss. App. LEXIS 479 (Miss. Ct. App. 2019).

Mississippi Supreme Court has applied the same statutory principles of the "slayer statutes" where the property at issue was life insurance proceeds rather than an inheritance; the same principles would apply to Public Employees' Retirement System benefits for the strong public policy against allowing someone to profit from involvement in the death of another. Hicks v. Public Employees' Ret. Sys. of

Miss., 282 So. 3d 1204, 2019 Miss. App. LEXIS 479 (Miss. Ct. App. 2019).

CHAPTER 5.

WILLS AND TESTAMENTS

Sec.
91-5-35. Will devising real property admitted to probate as muniment of title only; petition signature; rights of interested parties unaffected.

§ 91-5-33. Person who kills another not to take under his will.

JUDICIAL DECISIONS

1. In general.

Public Employees' Retirement System (PERS) Board of Trustees did not err in denying the claim a deceased PERS member's sister because the member's husband was entitled to lifetime spousal survivor benefits, notwithstanding the fact he was convicted of aggravated driving under the influence in connection with the member's death; the husband did not willfully cause the member's death under the slayer statutes, and he had been married to the member for over one year. Hicks v. Public Employees' Ret. Sys. of Miss., 282 So. 3d 1204, 2019 Miss. App. LEXIS 479 (Miss. Ct. App. 2019).

Mississippi Supreme Court has applied the same statutory principles of the "slayer statutes" where the property at issue was life insurance proceeds rather than an inheritance; the same principles would apply to Public Employees' Retirement System benefits for the strong public policy against allowing someone to profit from involvement in the death of another. Hicks v. Public Employees' Ret. Sys. of Miss., 282 So. 3d 1204, 2019 Miss. App. LEXIS 479 (Miss. Ct. App. 2019).

§ 91-5-35. Will devising real property admitted to probate as muniment of title only; petition signature; rights of interested parties unaffected.

(1) When a person dies testate owning at the time of death real property in the State of Mississippi and his will purports to devise such realty, then said will may be admitted to probate, as a muniment of title only, by petition signed and sworn, without the necessity of administration or the appointment of an executor or administrator with the will annexed, provided it be shown by said petition that:

(a) The value of the decedent's probate estate in the State of Mississippi at the time of his or her death, exclusive of any interest in real property and exempt property set forth in Section 91-7-117, did not exceed the sum set forth in Section 91-7-322; and

(b) All known debts of the decedent and his estate have been paid, including estate and income taxes, if any.

(2) The petition shall be signed and sworn by the personal representative, including (a) an executor, (b) an administrator with the will annexed, or (c) other personal representative serving in a foreign jurisdiction. If there is no such serving executor, administrator with the will annexed, or other personal

representative, then it shall be signed and sworn by (i) the spouse of the decedent, if then living, and (ii) the devisees of the Mississippi real property, whether specific or residuary, but excluding persons holding mere contingent remainder interests in the real property.

(3) The petition may be signed for and on behalf of the spouse of the decedent, or a beneficiary under the will of the decedent, by a person acting in a representative capacity in accordance with Section 91-8-303.

(4) The probate of a will under this section shall in no way affect the rights of any interested party to petition for a formal administration of the estate or to contest the will as provided by Section 91-7-23, Mississippi Code of 1972, or the right of anyone desiring to contest a will presented for probate as provided by Section 91-7-21, or as otherwise provided by law.

(5) This section shall apply to wills admitted to probate from and after July 1, 2020, notwithstanding that the testator or testatrix may have died on or before July 1, 2020.

HISTORY: Laws, 1983, ch. 385; Laws, 1984, ch. 467; Laws, 1989, ch. 582, § 1, eff from and after July 1, 1989; Laws, 2020, ch. 343, § 2, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment in (1), deleted “to by all beneficiaries named in the will, and the spouse of such deceased person if such spouse is not named as a beneficiary in the will” following “by petition signed and sworn”; in (1)(a), substituted “probate estate” for “personal estate,” inserted “and exempt property set forth in Section 91-7-117” and substituted “sum set forth in Section 97-7-322” for “sum of Ten Thousand Dollars ($10,000.00), exclusive of exempt property”; rewrote (2), which read: “If any beneficiary to any will admitted to probate pursuant to this section shall be under a disability, then the petition may be signed for him by one of his parents or his legal guardian”; added (3); redesignated former (3) and (4) as (4) and (5); and in (5), substituted “July 1, 2020” for “July 1, 1984” both times it appears.

CHAPTER 7.

EXECUTORS AND ADMINISTRATORS

General Provisions. 91-7-1
Nonresident Decedents. 91-7-501

GENERAL PROVISIONS

Sec.
91-7-1. Venue of proof of wills.
91-7-33. Foreign wills recorded.
91-7-90. Order of abatement for shares of distributees of deceased’s property.
91-7-91. Assets defined; unsecured creditors to give notice.
91-7-93. Inventory of money and property owned by decedent at time of death.
91-7-95. Supplementary inventory or appraisement.
91-7-109. Inventory and appraisement by qualified disinterested persons.
91-7-111. Repealed.
91-7-113. Repealed.
91-7-115. Repealed.

Sec.
91-7-117. Executor or administrator to set apart exempt property.
91-7-135. Court or chancellor to set apart one year's support for family.
91-7-137. Repealed.
91-7-139. Repealed.
91-7-141. Court or chancellor may apportion year's allowance.
91-7-191. Sale of land upon insufficiency of personalty.
91-7-195. Creditors may apply for sale of property.
91-7-199. Hearing and decree.
91-7-255. Fiduciary not to transfer negotiable papers.
91-7-257. Repealed.
91-7-259. Repealed.
91-7-261. Procedures for insolvent estates.
91-7-271. Distribution of assets in insolvent estate.
91-7-277. Annual accounts.
91-7-279. Repealed.
91-7-291. Final accounts.
91-7-297. Hearing and adjudication of final account.
91-7-322. Payment of indebtedness or delivery of personal property of decedent to decedent's successor; affidavit of successor.

§ 91-7-1. Venue of proof of wills.

Wills shall be proved in and letters testamentary thereon granted by the chancery court of the county in which the testator had a fixed place of residence. If he had no fixed place of residence and land be devised in the will, it shall be proved in and letters granted by the chancery court of the county where the land, or some part thereof, is situated.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 1 (24); 1857, ch. 60, art. 42; 1871, § 1098; 1880, § 1960; 1892, § 1813; 1906, § 1988; Hemingway's 1917, § 1653; 1930, § 1599; 1942, § 495; Laws, 2020, ch. 343, § 3, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment deleted the former last sentence, which read: "If the testator had no fixed place of residence and personal property only be disposed of by the will, it may be proved in and letters granted by the chancery court of the county where the testator died, or of the county in which some part of the property may be."

§ 91-7-19. All interested may be made parties.

JUDICIAL DECISIONS

1. In general.

Daughter would not forfeit her share of a decedent's estate because sufficient evidence existed that the daughter acted in good faith when submitting the second codicil; even though the jury found the second codicil invalid, that decision alone did not mean that it was submitted in bad faith or without probable cause, and under the statute the jury could not ever reach that question. Estate of Roosa v. Roosa, — So. 3d —, 2019 Miss. App. LEXIS 163 (Miss. Ct. App. Apr. 23, 2019), cert. denied, 283 So. 3d 733, 2019 Miss. LEXIS 412 (Miss. 2019), cert. denied, — So. 3d —, 2019 Miss. LEXIS 477 (Miss. 2019).

Court of appeals declined to remand for a jury to determine whether a decedent's daughter exhibited good faith in probating the second codicil because the issue was not within the jury's province under the statute. Estate of Roosa v. Roosa, — So. 3d —, 2019 Miss. App. LEXIS 163 (Miss. Ct. App. Apr. 23, 2019), cert. denied, 283 So. 3d 733, 2019 Miss. LEXIS 412 (Miss. 2019), cert. denied, — So. 3d —, 2019 Miss. LEXIS 477 (Miss. 2019).

§ 91-7-33. Foreign wills recorded.

Authenticated copies of wills proven according to the laws of any of the states of the union, of the territories, of the District of Columbia, or any foreign country, and affecting or disposing of real property within this state, may be admitted to probate in the proper court. Such will may be contested as the original might have been if it had been executed in this state, or the original will may be proven and admitted to record here.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 1 (25); 1857, ch. 60, art. 49; 1871, § 1105; 1880, § 1976; 1892, § 1829; 1906, § 2004; Hemingway's 1917, § 1669; 1930, § 1614; 1942, § 510; Laws, 2020, ch. 343, § 4, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment inserted "real" preceding "property within this state."

§ 91-7-90. Order of abatement for shares of distributees of deceased's property.

(1) Except as provided in subsection (2) and except as provided in connection with the share of the surviving spouse who elects to take an elective share, shares of distributees abate, without any preference or priority as between real and personal property, in the following order: (a) property not disposed of by the will; (b) residuary bequests and devises; (c) general bequests and devises; (d) specific bequests and devises. For purposes of abatement, a general bequest or devise charged on any specific property or fund is a specific bequest or devise to the extent of the value of the property on which it is charged, and upon the failure or insufficiency of the property on which it is charged, a general bequest or devise to the extent of the failure or insufficiency. Abatement within each classification is in proportion to the amounts of property each of the beneficiaries would have received, if full distribution of the property had been made in accordance with the terms of the will.

(2) If the will expresses an order of abatement, or if the testamentary plan or the express or implied purpose of the devise would be defeated by the order of abatement stated in subsection (1), the shares of the distributees abate as may be found necessary to give effect to the intention of the testator.

(3) If the subject of a preferred bequest or devise is sold or used incident to administration, abatement shall be achieved by appropriate adjustments in, or contribution from, other interests in the remaining assets.

HISTORY: Laws, 2019, ch. 458, § 11, eff from and after July 1, 2019.

§ 91-7-91. Assets defined; unsecured creditors to give notice.

The real property, goods, chattels, personal property, choses in action and money of the deceased, or which may have accrued to his estate after his death from the sale of property, real, personal or otherwise, and the rent of lands accruing during the year of his death, whether he died testate or intestate, shall be assets and shall stand chargeable with all the just debts, funeral expenses of the deceased, and the expenses of settling the estate, without any preference or priority as between real and personal property, and shall abate in the manner set out in Section 91-7-90. However, in cases where no administration has been or shall be commenced on the estate of the decedent within three (3) years after his death, no creditor of the decedent shall be entitled to a lien or any claim whatsoever on any real property of the decedent, or the proceeds therefrom, against purchasers or encumbrancers for value of the heirs of the decedent unless such creditor shall, within three (3) years and ninety (90) days from the date of the death of the decedent, file on the lis pendens docket in the office of the clerk of the chancery court of the county in which the land is located notice of his claim, containing the name of the decedent, a brief statement of the nature, amount and maturity date of his claim and a description of the real property sought to be charged with the claim. The provisions of this section requiring the filing of notice shall not apply to any secured creditor having a recorded lien on the property.

HISTORY: Codes, 1857, ch. 60, art. 80; 1871, § 1134; 1880, § 2025; 1892, § 1881; 1906, § 2056; Hemingway's 1917, § 1721; 1930, § 1643; 1942, § 539; Laws, 1938, ch. 262; Laws, 1975, ch. 373, § 3, eff from and after January 1, 1976; Laws, 2019, ch. 458, § 12, eff from and after July 1, 2019.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error near the beginning of the second sentence by deleting the word "that" following "However." The Joint Committee ratified the correction at its August 12, 2019, meeting.

Amendment Notes — The 2019 amendment, in the first sentence, inserted "real property," substituted "personal property" for "personal estate," and added "without any preference or priority…set out in Section 91-7-90" at the end; deleted the former second sentence, which read: "The lands of the testator or intestate shall also stand chargeable for the debts and such expenses over and above what the personal estate may be sufficient to pay, and may be subjected thereto in the manner hereinafter directed"; substituted "with the claim" for "therewith" at the end of the next-to-last sentence; and made a minor stylistic change.

§ 91-7-93. Inventory of money and property owned by decedent at time of death.

The executor or administrator shall, within ninety (90) days of the grant of his letters unless further time be allowed by the court or clerk, file an inventory, verified by oath, of the money and property owned by the decedent at the time of death, listing it with reasonable detail, and indicating as to each listed item, its market value as of the date of the decedent's death, and the type and amount of any encumbrance that may exist with reference to any item.

There shall be no requirement for filing an inventory if the requirement of filing an inventory is waived in the testator's will. The court or the chancellor may also waive the requirement for filing an inventory in an intestate estate upon petition to the court by the administrator. Even though the requirement of filing an inventory is waived in the testator's will or waived by the court or the chancellor upon petition to the court by the administrator in an intestate estate, the court or the chancellor may later order the executor or administrator to file an inventory upon the petition of a beneficiary or other interested party if the court or the chancellor determines that the filing of inventory is necessary or advisable.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 1 (78); 1857, ch. 60, art. 73; 1871, § 1127; 1880, § 2018; 1892, § 1864; 1906, § 2039; Hemingway's 1917, § 1704; 1930, § 1644; 1942, § 540; Laws, 2019, ch. 458, § 1, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment rewrote the section, which read: "The executor or administrator shall, within ninety days of the grant of his letters unless further time be allowed by the court or clerk, return an inventory, verified by oath, of the money belonging to the deceased which has come to his hands and of the debts due the deceased which have come to his knowledge, specifying the nature of each debt, setting down such as may be deemed hopeful distinct and separate from those which may be deemed doubtful and desperate. He shall, where appraisement is dispensed with or be not made, embrace in said inventory and give its value all property which has come to his hands; and where an appraisement has been made, he shall be charged therewith unless he show cause to the contrary."

§ 91-7-95. Supplementary inventory or appraisement.

If any property not included in the original inventory comes to the knowledge of the executor or administrator, or if the executor or administrator learns that the value or description indicated in the original inventory for any item is erroneous or misleading, he shall make a supplementary inventory or appraisement showing the market value as of the date of the decedent's death of the new item or the revised market value or descriptions, and the appraisers or other data relied upon, if any, and file it with the court if the original inventory was filed, or furnish copies thereof or information thereof to persons interested in the new information.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 1 (79); 1857, ch. 60, art. 75; 1871, § 1129; 1880, § 2020; 1892, § 1866; 1906, § 2041; Hemingway's 1917, § 1706; 1930, § 1645; 1942, § 541; Laws, 2019, ch. 458, § 2, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment rewrote the section, which read: "Whenever personal property of any kind, or assets not contained in the previous inventory, shall come to the possession or knowledge of the executor, administrator, or collector, an account or inventory of the same shall be returned within thirty days from the time of discovery, and the same shall be appraised by sworn appraisers unless the court or clerk shall deem it unnecessary."

§ 91-7-109. Inventory and appraisement by qualified disinterested persons.

The executor or administrator may employ a qualified and disinterested appraiser to assist him in ascertaining the fair market value as of the date of the decedent's death of any asset the value of which may be subject to reasonable doubt. Different persons may be employed to appraise different kinds of assets included in the estate. The names and addresses of any appraiser shall be indicated on the inventory with the item or items he appraised.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 1 (72); 1857, ch. 60, art. 70; 1871, § 1124; 1880, § 2014; 1892, § 1872; 1906, § 2047; Hemingway's 1917, § 1712; 1930, § 1652; 1942, § 548; Laws, 2019, ch. 458, § 3, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment rewrote the section, which read: "The goods, chattels, and personal estate of the decedent, other than money and choses in action, shall be inventoried and appraised unless the court or clerk, for good cause, order it dispensed with. On granting letters testamentary, or of administration, or of temporary administration, unless otherwise ordered, a warrant or warrants shall issue under the seal of the court, commanding three or more discreet persons not related to the deceased or interested in the estate to make the inventory and appraisement, any three or more of whom may act. The warrant shall command the appraisers to set apart to those entitled thereto the property exempt by law from execution, and to make the allowance for one year's support and tuition of those entitled to receive it."

§ 91-7-111. Repealed.

Repealed by Laws, 2019, ch. 458, § 23, eff from and after July 1, 2019.

§ 91-7-111. [Codes, Hutchinson's 1848, ch. 49, art. 1 (71); 1857, ch. 60, art. 69; 1871, § 1123; 1880, § 2015; 1892, § 1873; 1906, § 2048; Hemingway's 1917, § 1713; 1930, § 1653; 1942, § 549.]

Editor's Notes — Former § 91-7-111 provided for the use of three or more appraisers in each county in which property of personal estates was located.

§ 91-7-113. Repealed.

Repealed by Laws, 2019, ch. 458, § 25, eff from and after July 1, 2019.

§ 91-7-113. [Codes, Hutchinson's 1848, ch. 49, art. 1 (72); 1857, ch. 60, art. 70; 1871, § 1124; 1880, § 2014; 1892, § 1874; 1906, § 2049; Hemingway's 1917, § 1714; 1930, § 1654; 1942, § 550.]

Editor's Notes — Former § 91-7-113 provided a warrant for appraisers form.

§ 91-7-115. Repealed.

Repealed by Laws, 2019, ch. 458, § 24, eff from and after July 1, 2019.

§ 91-7-115. [Codes, 1892, § 1875; 1906, § 2050; Hemingway's 1917, § 1715; 1930, § 1655; 1942, § 551.]

Editor's Notes — Former § 91-7-115 required appointed appraisers to take an oath and allowed vacant appraiser positions to be filled.

§ 91-7-117. Executor or administrator to set apart exempt property.

It shall be the duty of the executor or administrator to set apart to the widow and children, or to the widow if there be no children, or to the children if there be no widow, such personal property as is exempt by law from execution. The action of the executor or administrator shall not be necessary to the title of the widow and children to the exempt property, which shall vest in them by operation of law on the death of the husband and father.

HISTORY: Codes, 1871, § 1290; 1880, § 1278; 1892, § 1876; 1906, § 2051; Hemingway's 1917, § 1716; 1930, § 1656; 1942, § 552; Laws, 2019, ch. 458, § 4, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment rewrote the section, which read: "It shall be the duty of the appraisers to set apart to the widow and children, or to the widow if there be no children, or to the children if there be no widow, such personal property as is exempt by law from execution, and make report thereof and attach it to the appraisement, which shall be approved by the court if found correct, or may be referred back to them by the court with instructions as to what to allow. The action of the appraisers or the court shall not be necessary to the title of the widow and children to the exempt property, which shall vest in them by operation of law on the death of the husband and father."

§ 91-7-135. Court or chancellor to set apart one year's support for family.

It shall be the duty of the court or the chancellor to set apart out of the effects of the decedent, for the spouse and children who were being supported by the decedent, or for the spouse if there be no such children, or for such children if there be no spouse, one (1) year's provision, including such provision as may be embraced in the exempt property set apart. If there be no provisions, or an insufficient amount, the court or the chancellor shall determine the sum necessary for the comfortable support of the spouse and children, or spouse or children, as the case may be, for one (1) year.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 17 (1); 1857, ch. 60, art. 172; 1871, §§ 1290, 1957; 1880, § 1279; 1892, § 1877; 1906, § 2052; Hemingway's 1917, § 1717; 1930, § 1664; 1942, § 561; Laws, 1992, ch. 321 § 1, eff from and after passage (approved April 20, 1992); Laws, 2019, ch. 458, § 5, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment substituted "court or the chancellor" for "appraisers" and "appraiser" in the first and second sentences; substituted "shall determine the sum necessary" for "shall allow money in lieu thereof or in addition thereto necessary" in the second sentence; and deleted the former last two sentences, which read: "In addition to the provisions or money in lieu thereof, the appraisers shall ascertain and allow what sum of money will be needed to purchase necessary wearing apparel for the spouse and such children, or the spouse or children, as the case may be, and to pay tuition for the children for one (1) year. If a parent dies leaving children who are infants and were being maintained by the parent, the same provisions and allowance shall be set apart and made for them as above provided."

§ 91-7-137. Repealed.

Repealed by Laws, 2019, ch. 458, § 19, eff from and after July 1, 2019.

§ 91-7-137. [Codes, Hutchinson's 1848, ch. 49, art. 1 (75); 1857, ch. 60, arts. 71, 72; 1871, §§ 1125, 1126; 1880, §§ 2016, 2017; 1892, § 1878; 1906, § 2053; Hemingway's 1917, § 1718; 1930, § 1665; 1942, § 562.]

Editor's Notes — Former § 91-7-137 required the filing of the appraisers' reports with the court.

§ 91-7-139. Repealed.

Repealed by Laws 2019, ch. 458, § 20, eff from and after July 1, 2019.

§ 91-7-139. [Codes, 1892, § 1879; 1906, § 2054; Hemingway's 1917, § 1719; 1930, § 1666; 1942, § 563.]

Editor's Note — Former § 91-7-139 provided for an extension of time for appraisers to perform their duties and sanctions for failure to file an inventory.

§ 91-7-141. Court or chancellor may apportion year's allowance.

The court or the chancellor may apportion the one (1) year's allowance, or any part of it, according to the situation, rights, and interests of any of the children or the widow, and may direct the payment of any portion of the allowance which may be found necessary or proper to any of them.

HISTORY: Codes, 1871, § 1959; 1880, § 1281; 1892, § 1880; 1906, § 2055; Hemingway's 1917, § 1720; 1930, § 1667; 1942, § 564; Laws, 2019, ch. 458, § 6, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment substituted "The court or the chancellor may apportion the one (1) year's allowance" for "The chancery court may apportion the one year's allowance."

§ 91-7-149. Probate of claims.

JUDICIAL DECISIONS

1. In general.

Because a hospital was not entitled to sovereign immunity on its probated claim against an estate, the chancellor did not err by denying its sovereign-immunity claim; the chancellor had jurisdiction to adjudicate the probated claim filed by the hospital and contested by the estate because what was before the chancery court was the validity of the hospital's probated claim, not the estate's counterclaim for emotional distress, fraud, and punitive damages. In re Estate of Matute, 293 So. 3d 224, 2020 Miss. LEXIS 43 (Miss. 2020).

§ 91-7-165. Claims may be contested.

JUDICIAL DECISIONS

1. In general.

Because a hospital was not entitled to sovereign immunity on its probated claim against an estate, the chancellor did not err by denying its sovereign-immunity claim; the chancellor had jurisdiction to adjudicate the probated claim filed by the hospital and contested by the estate because what was before the chancery court was the validity of the hospital's probated claim, not the estate's counterclaim for emotional distress, fraud, and punitive damages. In re Estate of Matute, 293 So. 3d 224, 2020 Miss. LEXIS 43 (Miss. 2020).

§ 91-7-191. Sale of land upon insufficiency of personalty.

Whenever it shall be necessary for an executor or administrator to sell property to pay the debts and expenses of the estate, he may file a petition in the chancery court for the sale of the land of the deceased, or so much of it as may be necessary, and exhibit to the court a true account of the personal estate and debts due from the deceased, and the expenses and a description of the land to be sold. Any sale of land shall be subject to the abatement provisions of Section 91-7-90.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 1 (98); 1857, ch. 60, art. 88; 1871, § 1148; 1880, § 2039; 1892, § 1893; 1906, § 2068; Hemingway's 1917, § 1735; 1930, § 1691; 1942, § 588; Laws, 2019, ch. 458, § 13, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment substituted "Whenever it shall be necessary for an executor or administrator to sell property to pay the debts and expenses of the estate" for "When an executor or administrator shall discover that the personal property will not be sufficient to pay the debts and expenses" in the first sentence; and added the last sentence.

§ 91-7-195. Creditors may apply for sale of property.

Any creditor of the decedent whose claim against the estate is registered shall have the right to file a petition, as the executor or administrator may, for the sale of land or personal property of the decedent for the payment of debts. The court shall hear and decide upon such petition, and decree as if the application had been made by the executor or administrator, and may order the executor or administrator to make the sale. Any sale of land shall be subject to the abatement provisions of Section 91-7-90.

HISTORY: Codes, 1880, § 2047; 1892, § 1895; 1906, § 2070; Hemingway's 1917, § 1737; 1930, § 1693; 1942, § 590; Laws, 2019, ch. 458, § 14, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment added the last sentence.

§ 91-7-199. Hearing and decree.

The court, after service of summons or proof of publication, shall hear and examine the allegations and evidence in support of the petition and the objections to and evidence against it, if any. If on such hearing the court be satisfied that the land ought to be sold to pay the debts of the descendent and expenses of the estate, it may make a decree for the sale of a part or the whole of the land; and when a part only is decreed to be sold, the decree shall specify what part. If the real estate be so situated that a part cannot be sold without manifest prejudice to the heirs or devisees, the court may decree that the whole shall be sold; and the overplus arising from such sale, after the payment of debts and expenses, shall be distributed amongst the heirs according to the law of descents, or amongst the devisees according to the will. The sale of the land and distribution of the proceeds of the sale shall be subject to the abatement provisions of Section 91-7-90.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 1 (98); 1857, ch. 60, art. 89; 1871, § 1149; 1880, § 2040; 1892, § 1894; 1906, § 2069; Hemingway's 1917, § 1736; 1930, § 1695; 1942, § 592; Laws, 2019, ch. 458, § 15, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment substituted "land ought to be sold to pay the debts of the descendent and expenses of the estate" for "personal estate is insufficient to pay the debts of the deceased and that the land ought to be sold for that purpose" in the second sentence; deleted the former last sentence, which read: "The heir or devisee whose lands shall be sold may compel all others holding or claiming under such intestate or testator to contribute in proportion to their respective interests, so as to equalize the burden of the loss"; and added the present last sentence.

§ 91-7-237. Death of party not to abate suit in certain cases.

JUDICIAL DECISIONS

2. Suits brought by decedent.

Due process claim that a city unlawfully impounded and forfeited ownership in a dog survived the owner's death to the extent it sought injunctive relieve or damages for the commission of an injury to the person or property. A constitutional challenge to the impoundment ordinance did not survive because it was not a personal action. Estate of Holt v. City of Hattiesburg, 800 Fed. Appx. 228, 2020 U.S. App. LEXIS 3621 (5th Cir. Miss. 2020).

§ 91-7-255. Fiduciary not to transfer negotiable papers.

An executor, administrator, guardian, receiver, or other fiduciary appointed by or acting pursuant to the authority of any chancery court may sell, assign, or transfer any note, bill of exchange, bond, stock certificate, or other negotiable paper belonging to the estate committed or entrusted to him by such court under the standard of care applicable to trustees as set forth in Section 91-8-101 et seq. If the exercise of power concerning the estate is improper, the personal representative is liable to interested persons for damage or loss resulting from breach of his fiduciary duty to the same extent as a trustee of an express trust under the Mississippi Uniform Trust Code.

HISTORY: Codes, 1942, § 620; Laws, 1936, ch. 243; Laws, 2019, ch. 458, § 7, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment rewrote the section, which read: "No executor, administrator, guardian, receiver, or other fiduciary appointed by or acting pursuant to the authority of any chancery court may sell, assign, or transfer any note, bill of exchange, bond, stock certificate, or other negotiable paper belonging to the estate committed or intrusted to him by such court, unless he shall be authorized so to do by an order of the court or chancellor, or by the last will and testament of the decedent. Every such prohibited sale, assignment, or transfer shall be void, whether the vendee, assignee, or transferee shall have had notice or knowledge of the want or lack of authority of such fiduciary to sell, assign, or transfer the same or not."

Cross References — Mississippi Uniform Trust Code, see § 91-8-101 et seq.

§ 91-7-257. Repealed.

Repealed by Laws 2019, ch. 458, § 21, eff from and after July 1, 2019.

§ 91-7-257. [Codes, Hutchinson's 1848, ch. 49, art. 1 (93); 1857, ch. 60, arts. 128, 129; 1871, §§ 1186, 1187; 1880, §§ 2010, 2011; 1892, § 1928; 1906, § 2102; Hemingway's 1917, § 1770; 1930, § 1722; 1942, § 621.]

Editor's Notes — Former § 91-7-257 prohibited executors or administrators from removing estate property from the state.

§ 91-7-259. Repealed.

Repealed by Laws, 2020, ch. 406, § 90, eff from and after July 1, 2020.

§ 91-7-259. [Codes, 1857, ch. 60, art. 131; 1871, § 1189; 1880, § 2091; 1892, § 1925; 1906, § 2099; Hemingway's 1917, § 1767; 1930, § 1723; 1942, § 622.]

Editor's Note — Former § 91-7-259 provided that foreign executor or administrator may sue in this state.

§ 91-7-261. Procedures for insolvent estates.

The executor or administrator shall take proper steps speedily to ascertain whether the estate be solvent or insolvent. If both the real and personal estate be insufficient to pay the debts of the deceased, he shall exhibit to the court a true account of all the personal estate, assets of every description, the land of the deceased, and all the debts due from the deceased; and if it appears to the court that the estate is insolvent, it shall make an order for the sale of all the property. The proceeds of such sale and all other assets shall be equally distributed among all the creditors whose claims shall be duly filed and established, in proportion to the sums due and owing to them respectively, the expenses of the last sickness, the funeral, and the administration, including commissions, being first paid. The sale of the land and distribution of the proceeds of the sale shall be subject to the abatement provisions of Section 91-7-90. Before any decree for sale is made, the devisees or heirs shall be made parties to the proceeding.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 1 (103); 1857, ch. 60, art. 98; 1871, § 1158; 1880, § 2054; 1892, § 1939; 1906, § 2113; Hemingway's 1917, § 1781; 1930, § 1724; 1942, § 623; Laws, 2019, ch. 458, § 16, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment added the next-to-last sentence.

§ 91-7-271. Distribution of assets in insolvent estate.

When the claims are established and the amount of assets ascertained, the court shall adjudge the pro rata share of each creditor, deducting first the preference claims and deducting from debts not due the legal interest from the time of payment up to the time of their maturity; and the executor or administrator shall distribute all money amongst the creditors, in proportion to their demands. The payment of the claims of the creditors shall be subject to the abatement provisions of Section 91-7-90. A creditor whose pro rata share has been so adjudged, after ten (10) days from the date of the decree ascertaining his share, the same not having been paid, may have execution against the executor or administrator and the sureties on his bond for such sum as may be due him, and costs of execution.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 1 (103); 1857, ch. 60, art. 102; 1871, § 1162; 1880, § 2060; 1892, § 1944; 1906, § 2118; Hemingway's 1917, § 1786; 1930, § 1729; 1942, § 628; Laws, 2019, ch. 458, § 17, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment added the second sentence; and inserted "(10)" in the last sentence.

§ 91-7-277. Annual accounts.

Every executor or administrator, at least once in each year or oftener if required by the court, shall present under oath an account of his administration, showing the disbursements, every item of which and the amount thereof to be distinctly stated, and it shall also show the receipts of money and from what sources. The failure to account annually shall be a breach of the administration bond, for which it may be put in suit, or the executor or administrator may be removed; but the court may, on application and on cause shown, extend the time for accounting. The court shall examine all such accounts and if satisfied that the account is just and true, it shall decree the same approved and allowed as a correct annual settlement.

There shall be no requirement for filing annual accounts if the requirement of filing accountings is waived in the testator's will. The court or the chancellor may also waive the requirement for filing annual accounts in an intestate estate upon petition to the court by the administrator. Even though the requirement of filing annual accounts is waived in the testator's will or waived by the court or the chancellor upon petition to the court by the administrator in an intestate estate, the court or the chancellor may later order the executor or administrator to file annual accounts upon the petition of a beneficiary or other interested party if the court or the chancellor determines that the filing of annual accounts is necessary or advisable.

HISTORY: Codes, 1857, ch. 60, art. 104; 1871, § 1164; 1880, § 2067; 1892, § 1947; 1906, § 2121; Hemingway's 1917, § 1789; 1930, § 1732; 1942, § 631; Laws, 1960, ch. 217, § 5; Laws, 1968, ch. 306, § 1; Laws, 1996, ch. 400, § 43, eff from and after passage (approved March 19, 1996); Laws, 2019, ch. 458, § 8, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment rewrote the section.

JUDICIAL DECISIONS

1. In general.

Denial of daughters' accounting request was not an abuse of discretion because the chancellor correctly held that under the mother's will, the daughters' had so remote an interest with such a mere expectancy of a future inheritance that they were not entitled to an accounting until that interest vested; neither daughter was entitled to an accounting because there was no showing of waste, loss, mismanagement, or fraud. Flowers v. Estate of Flowers (In re Estate of Flowers), 264 So. 3d 775, 2019 Miss. LEXIS 95 (Miss. 2019).

Denial of daughters' accounting request was not an abuse of discretion because the daughters' had so remote an interest with such a mere expectancy of a future inheritance that they were not entitled to an accounting until that interest vested; chancellors had long been vested with discretionary authority to decide matters of equity, and in the daughters' case against the mother's estate, equity required a denial of the daughters' accounting request for such a remote interest. Flowers v. Estate of Flowers (In re Estate of Flowers), 264 So. 3d 775, 2019 Miss. LEXIS 95 (Miss. 2019).

§ 91-7-279. Repealed.

Repealed by Laws, 2019, ch. 458, § 22, eff from and after July 1, 2019.

§ 91-7-279. [Codes, 1892, § 1948; 1906, § 2122; Hemingway's 1917, § 1790; 1930, § 1733; 1942, § 632; Laws, 1960, ch. 217, § 6; Laws, 1966, ch. 324, § 1, eff from and after passage (approved March 2, 1966).]

Editor's Notes — Former § 91-7-279 provided the format for filing vouchers with the court.

§ 91-7-291. Final accounts.

When the estate has been administered by payment of the debts and the collection of the assets, it shall be the duty of the executor or administrator, unless the court or chancellor, on cause shown, shall otherwise order, to make and file a final settlement of the administration by making out and presenting to the court, under oath, his final account, which shall contain a distinct statement of all the balances of the annual accounts, either as debits or credits, all other charges and disbursements, amounts received and not contained in any previous annual account, and a statement of the kind and condition of all assets in his hands. There shall be no requirement for filing a final account if the requirement of filing accountings is waived in the testator's will. The court or the chancellor may also waive the requirement for filing a final account in an intestate estate upon petition to the court by the administrator. Even though the requirement of filing accountings or the final account is waived in the testator's will or waived by the court or the chancellor upon petition to the court by the administrator in an intestate estate, the court or the chancellor may later order the executor or administrator to file a final account upon the timely petition of a beneficiary or other interested party if the court or the chancellor determines that the filing of a final account is necessary or advisable and the petition is timely filed.

HISTORY: Codes, 1857, ch. 60, art. 106; 1871, § 1166; 1880, § 2069; 1892, § 1950;

1906, § 2124; Hemingway's 1917, § 1792; 1930, § 1736; 1942, § 638; Laws, 1960, ch. 217, § 7; Laws, 2019, ch. 458, § 9, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment deleted "supported by legal vouchers" following "all other charges and disbursements" in the first sentence; deleted the former last two sentences, which read: "In the event that the account shall be presented by a bank or trust company which is subject to the supervision of the department of bank supervision of the State of Mississippi or of the comptroller of the currency of the United States and such account, or the petition for the approval of same, shall contain a statement under oath by an officer of said bank or trust company showing that the vouchers covering the disbursements in the account presented are on file with the said bank or trust company, such bank or trust company shall not be required to file vouchers. Provided, however, that said bank or trust company shall produce said vouchers for inspection of any interested party or his or her attorney at any time during legal banking hours at the office of said bank or trust company; and provided, further, that the court on its own motion, or on the motion of any interested party, may require that said vouchers be produced and inspected at the time of hearing of any objections that may be filed to any final account"; and added the present last three sentences.

§ 91-7-297. Hearing and adjudication of final account.

If process be returned executed, or publication has been made, the court shall examine the final account so presented and filed, hear the evidence in support of it, and the objections and evidence against it. If the court shall be satisfied that the account is correct, it shall make a final decree of approval and allowance, and shall, at the same time, order the executor or administrator to make distribution of the property in his hands. In proceedings for a final settlement, the court may allow any party interested to surcharge and falsify any annual or partial settlement of the executor or administrator.

HISTORY: Codes, 1857, ch. 60, art. 107; 1871, § 1169; 1880, § 2070; 1892, § 1953; 1906, § 2127; Hemingway's 1917, § 1795; 1930, § 1739; 1942, § 641; Laws, 1960, ch. 217, § 8; Laws, 2019, ch. 458, § 10, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment deleted "and supported by legal vouchers where required to be filed or produced for inspection" following "the account is correct" in the second sentence.

§ 91-7-321. Custodian appointed for distributive share.

OPINIONS OF THE ATTORNEY GENERAL

Under Miss. Code Section 91-7-321, court may "make such order for the safekeeping or secure investment of the fund as may be proper"; however, these funds are not public funds; rather they are private funds being held in trust for beneficiaries; as such, deposit into account of county treasury would not be appropriate. Salter, Apr. 28, 1993, A.G. Op. #93-0227.

§ 91-7-322. Payment of indebtedness or delivery of personal property of decedent to decedent's successor; affidavit of successor.

(1) Except as may be otherwise provided by Sections 81-5-63, 81-12-135, 81-12-137 and 91-7-323, at any time after thirty (30) days from the death of a decedent, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock, or chose in action belonging to the decedent shall make payment when due of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock, or chose in action to a person claiming to be the successor of the decedent, as defined herein, or in a manner as directed by the successor, upon being presented an affidavit made by the successor stating:

(a) That the value of the entire probate estate of the decedent, wherever located, excluding all liens and encumbrances thereon, does not exceed Seventy-five Thousand Dollars ($75,000.00);

(b) That at least thirty (30) days have elapsed since the death of the decedent;

(c) That no application or petition for the appointment of a personal representative of the decedent is pending, nor has a personal representative of the decedent been appointed in any jurisdiction;

(d) The facts of relationship establishing the affiant as a successor of the decedent;

(e) Directing the manner of distribution of the debt or property; and

(f) Acknowledging the successor's obligation to distribute the debt or property to those having a superior right to same.

(2) For the purposes of this section, "successor" means:

(a) The decedent's spouse;

(b) If there is no surviving spouse of the decedent, then any child of the decedent;

(c) If there is no surviving spouse or children of the decedent, then to any grandchild of the decedent; or

(d) If there is no surviving spouse, children or grandchildren of the decedent, then either parent or any siblings of the decedent.

(3) Any minor or incapacitated adult who is a successor of the decedent may be represented by a guardian, natural or appointed, conservator, custodian, or other personal representative, as appointed by the court or by power of attorney.

(4) Except as otherwise provided in Sections 93-20-209 and 93-20-431, the representative of a minor or incapacitated adult as defined in subsection (3) of this section shall receive any property or payments from the decedent's estate for the sole use and benefit of said minor or incapacitated adult.

(5) The successor of a decedent, upon complying with the provisions of subsection (1) of this section, shall be empowered to negotiate, transfer ownership and exercise all other incidents of ownership with respect to the personal property and instruments described in subsection (1) of this section.

(6) Any person paying, delivering, transferring or issuing personal property or the evidence thereof pursuant to the provisions of subsection (1) of this section shall be discharged and released to the same extent as if such person had dealt with a personal representative of the decedent. Such person shall not be required to see to the proper application of the personal property or evidence thereof or to inquire into the truth of any statement in the affidavit. If any person to whom an affidavit is delivered, in accordance with the provisions of subsection (1) of this section, refuses to pay, deliver, transfer or issue any personal property or evidence thereof to the successor, such property or evidence thereof may be recovered or its payment, delivery, transfer or issuance compelled upon proof of the successor's right in a proceeding brought in chancery court for such purpose by or on behalf of the persons entitled thereto. Any person to whom payment, delivery, transfer or issuance is made shall be answerable and accountable to the personal representative of the estate, if any, or to any other person having a superior right.

HISTORY: Laws, 1982, ch. 403, § 1; Laws, 1983, ch. 407; Laws, 1984, ch. 333; Laws, 1986, ch. 386; Laws, 2003, ch. 408, § 1; Laws, 2009, ch. 390, § 1, eff from and after July 1, 2009; Laws, 2019, ch. 458, § 18, eff from and after July 1, 2019; Laws, 2020, ch. 343, § 7, eff from and after July 1, 2020.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in this section by substituting "stirpes" for "stripes" in (2)(c). The Joint Committee ratified the correction at its October 19, 2020, meeting. The 2020 amendment by Section 7 of Chapter 343, Laws of 2020, substituted "any grandchild" and "grandchildren" for "descendants per stripes" in subsection (2)(c) and (d), respectively.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error near the beginning of the second sentence by deleting the word "that" following "However." The Joint Committee ratified the correction at its August 12, 2019, meeting.

Amendment Notes — The 2019 amendment inserted "probate" following "entire" in (1)(a); rewrote (2), which read: "For the purposes of this section, "successor" means the decedent's spouse; or, if there is no surviving spouse of the decedent, then the adult with whom any minor children of the decedent are residing; or, if there is no surviving spouse or minor children of the decedent, then any adult child of the decedent; or, if there is no surviving spouse or children of the decedent, then either parent of the decedent"; rewrote (3), which read: "Any person who is the successor of the decedent, because the person is an adult with whom the minor children of the decedent are living, shall receive any property or payments of or for the decedent for the use and benefit of said children"; added (4); and redesignated former (4) and (5) as (5) and (6).

The 2020 amendment in (1), inserted "or in a manner as directed by the successor" in the introductory paragraph, in (a), substituted "Seventy-five Thousand Dollars ($75,000.00)" for "Fifty Thousand Dollars ($50,000.00)," added (e) and (f), and made a related change; in (2), substituted "any grandchild" and "grandchildren" for "descendants per stripes," and deleted former (e), which read: "If none of the above successors can be found, then to the decedent's heirs at law"; and in (4), added the exception at the beginning, and inserted "of this section."

§ 91-7-323. Wages due deceased employee.

OPINIONS OF THE ATTORNEY GENERAL

Consistent with and pursuant to IRS Revenue Ruling 86-109, neither federal nor state income taxes would be deducted from payments of accrued wages or vacation pay issued to a deceased state employee's designee or successor. Ranck, June 18, 1999, A.G. Op. #99-0230.

NONRESIDENT DECEDENTS

Sec.

91-7-501. Definitions.
91-7-503. Settlement of debt to estate of nonresident decedent outside of administration.
91-7-505. Release of debtor for good faith payment or delivery on basis of proof of authority and affidavit.
91-7-507. Settlement of debt to estate of nonresident decedent outside of administration prohibited upon resident creditor's notice.
91-7-509. Domiciliary foreign personal representative may file authenticated copies of appointment under certain circumstances.
91-7-511. Domiciliary foreign personal representative authorized to exercise powers of local personal representative as to Mississippi assets.
91-7-513. Effect of application or petition for local administration of estate.
91-7-515. Applicability of Sections 91-7-501 through 91-7-523 to nonresident decedents.
91-7-517. Personal jurisdiction of courts over foreign personal representative.
91-7-519. Foreign personal representative subject to jurisdiction of Mississippi courts to the same extent as decedent was immediately prior to death.
91-7-521. Service of process.
91-7-523. Effect of a foreign adjudication.

§ 91-7-501. Definitions.

As used in Sections 91-7-501 through 91-7-523:

(1) "Local administration" means administration by a personal representative appointed in this state pursuant to appointment proceedings.

(2) "Personal representative" means an executor, an administrator with or without the will annexed, or other representative authorized in a court of competent jurisdiction to conduct an estate administration.

(3) "Local personal representative" includes any personal representative appointed in this state by appointment proceedings and excludes foreign personal representatives who acquire the power of a local personal representative under Section 91-7-509.

(4) "Resident creditor" means a person domiciled in, or doing business in this state, who is, or could be, a claimant against an estate of a nonresident decedent.

(5) "Foreign personal representative" means a personal representative appointed by another jurisdiction.

HISTORY: Laws, 2020, ch. 406, § 47, eff from and after July 1, 2020.

§ 91-7-503. Settlement of debt to estate of nonresident decedent outside of administration.

At any time after the expiration of sixty (60) days from the death of a nonresident decedent, any person indebted to the estate of the nonresident decedent or having possession or control of personal property, or of an instrument evidencing a debt, obligation, stock or chose in action belonging to the estate of the nonresident decedent may pay the debt, deliver the personal property, or the instrument evidencing the debt, obligation, stock or chose in action, to the domiciliary foreign personal representative of the nonresident decedent upon being presented with proof of his appointment, including the admitted will and letters testamentary or letters of administration or substantial equivalent, authenticated under the Acts of Congress under 28 U.S.C. Section 1739, and an affidavit made by or on behalf of the personal representative stating:

(1) The date of the death of the nonresident decedent;

(2) That no local administration, or application or petition therefor, is pending in this state; and

(3) That the domiciliary foreign personal representative is entitled to payment or delivery.

HISTORY: Laws, 2020, ch. 406, § 48, eff from and after July 1, 2020.

§ 91-7-505. Release of debtor for good faith payment or delivery on basis of proof of authority and affidavit.

Payment or delivery made in good faith on the basis of the proof of authority, including the admitted will and letters testamentary or letters of administration or substantial equivalent, authenticated under the Acts of Congress under 28 U.S.C. Section 1739, and affidavit releases the debtor or person having possession of the personal property to the same extent as if payment or delivery had been made to a local personal representative.

HISTORY: Laws, 2020, ch. 406, § 49, eff from and after July 1, 2020.

§ 91-7-507. Settlement of debt to estate of nonresident decedent outside of administration prohibited upon resident creditor's notice.

Payment or delivery under Section 91-7-503 may not be made if a resident creditor of the nonresident decedent has notified the debtor of the nonresident decedent or the person having possession of the personal property belonging to the nonresident decedent that the debt should not be paid nor the property delivered to the domiciliary foreign personal representative.

HISTORY: Laws, 2020, ch. 406, § 50, eff from and after July 1, 2020.

§ 91-7-509. Domiciliary foreign personal representative may file authenticated copies of appointment under certain circumstances.

If no local administration or application or petition therefor is pending in this state, a domiciliary foreign personal representative may file with a court in this state in a county in which property belonging to the decedent is located, authenticated copies of his appointment, including the admitted will and letters testamentary or letters of administration or substantial equivalent, authenticated under the Acts of Congress under 28 U.S.C. Section 1739, and any official bond he has given. A domiciliary foreign personal representative is subject to the estate administration requirements and obligations set forth in Title 91, Chapter 7, Mississippi Code of 1972.

HISTORY: Laws, 2020, ch. 406, § 51, eff from and after July 1, 2020.

§ 91-7-511. Domiciliary foreign personal representative authorized to exercise powers of local personal representative as to Mississippi assets.

A domiciliary foreign personal representative who has complied with Section 91-7-509 may exercise as to assets in this state all powers of a local personal representative, and may maintain actions and proceedings in this state subject to any conditions imposed upon nonresident parties generally.

HISTORY: Laws, 2020, ch. 406, § 52, eff from and after July 1, 2020.

§ 91-7-513. Effect of application or petition for local administration of estate.

The power of a domiciliary foreign personal representative under Section 91-7-503 or Section 91-7-511 shall be exercised only if there is no administration or application therefor pending in this state. An application or petition for local administration of the estate terminates the power of the foreign personal representative to act under Section 91-7-509, but the local court may allow the foreign personal representative to exercise limited powers to preserve the estate. A person who, before receiving actual notice of a pending local administration, has changed his position in reliance upon the powers of a foreign personal representative shall not be prejudiced by reason of the application or petition for, or grant of, local administration. The local personal representative is subject to all duties and obligations which have accrued by virtue of the exercise of the powers by the foreign personal representative and may be substituted for him in any action or proceedings in this state.

HISTORY: Laws, 2020, ch. 406, § 53, eff from and after July 1, 2020.

§ 91-7-515. Applicability of Sections 91-7-501 through 91-7-523 to nonresident decedents.

In respect to a nonresident decedent, the provisions of this chapter govern:

(1) Proceedings, if any, in a court of this state for probate of the will, appointment, removal, supervision, and discharge of the local personal representative, and any other order concerning the estate; and

(2) The status, powers, duties and liabilities of any local personal representative and the rights of claimants, purchasers, distributees and others in regard to a local administration.

HISTORY: Laws, 2020, ch. 406, § 54, eff from and after July 1, 2020.

§ 91-7-517. Personal jurisdiction of courts over foreign personal representative.

A foreign personal representative submits personally to the jurisdiction of the courts of this state in any proceeding relating to the estate by: (1) filing authenticated copies of his appointment as provided in Section 91-7-509; or (2) receiving payment of money or taking delivery of personal property under Section 91-7-503; or (3) doing any act as a personal representative in this state that would have given the state jurisdiction over him as an individual. Jurisdiction under paragraph (1) is limited to the money or value of personal property collected.

HISTORY: Laws, 2020, ch. 406, § 55, eff from and after July 1, 2020.

§ 91-7-519. Foreign personal representative subject to jurisdiction of Mississippi courts to the same extent as decedent was immediately prior to death.

In addition to jurisdiction conferred by Section 91-7-515, a foreign personal representative is subject to the jurisdiction of the courts of this state to the same extent that his decedent was subject to jurisdiction immediately before death.

HISTORY: Laws, 2020, ch. 406, § 56, eff from and after July 1, 2020.

§ 91-7-521. Service of process.

(a) Service of process may be made upon the foreign personal representative by registered or certified mail, addressed to his last reasonably ascertainable address, requesting a return receipt signed by addressee only. Notice by ordinary first-class mail is sufficient if registered or certified mail service to the addressee is unavailable. Service may be made upon a foreign personal representative in the manner in which service could have been made under other laws of this state on either the foreign personal representative or his decedent immediately before death.

(b) If service is made upon a foreign personal representative as provided in subsection (a), he shall be allowed at least thirty (30) days within which to appear or respond.

HISTORY: Laws, 2020, ch. 406, § 57, eff from and after July 1, 2020.

§ 91-7-523. Effect of a foreign adjudication.

An adjudication rendered in any jurisdiction in favor of or against any foreign personal representative of the estate is as binding on the local personal representative as if he were a party to the adjudication.

HISTORY: Laws, 2020, ch. 406, § 58, eff from and after July 1, 2020.

CHAPTER 8.

MISSISSIPPI UNIFORM TRUST CODE

Article 1. General Provisions and Definitions. 91-8-101
Article 5. Creditor's Claims; Spendthrift and Discretionary Trusts. .. 91-8-501

ARTICLE 1.

GENERAL PROVISIONS AND DEFINITIONS.

Sec.
91-8-103. Definitions.
91-8-105. Default and mandatory rules.

§ 91-8-103. Definitions.

In this chapter:

(1) "Action," with respect to an act of a trustee, includes a failure to act.

(2) "Ascertainable standard" means a standard relating to an individual's health, education, support, or maintenance within the meaning of Section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code of 1986, as in effect on July 1, 2014, or as later amended.

(3) "Beneficial interest" means a distribution interest or a remainder interest; provided, however, a beneficial interest specifically excludes a power of appointment or a power reserved by a settlor.

(4) "Beneficiary" means a person that:

(A) Has a present or future beneficial interest in a trust, vested or contingent; or

(B) In a capacity other than that of trustee, holds a power of appointment over trust property.

(5) "Beneficiary surrogate" means a person, including a trust protector or trust advisor, other than a trustee, designated by the settlor in the trust instrument or in a writing delivered to the trustee, or designated in a writing delivered to the trustee by a trust protector or trust advisor with power under the terms of the trust instrument to receive notices, information, and reports otherwise required to be provided to a beneficiary under Section 91-8-813(a) and (b), or to represent a beneficiary under Section 91-8-303(8).

(6) "Charitable trust" means a trust, or portion of a trust, created for a charitable purpose described in Section 91-8-405(a).

(7) "Conservator" means a person appointed by the court to administer the estate of a minor or adult individual as defined in Section 93-20-102.

(8) "Directed trust" means a trust where through the terms of the trust, one or more persons are given the authority to direct or consent to a fiduciary's actual or proposed investment decision, distribution decision, or any other decision of the fiduciary.

(9) "Distribution interest" means:

(A) An interest, other than a remainder interest, held by an eligible distributee or permissible distributee under a trust and may be a current distribution interest or a future distribution interest;

(B) A distribution interest is classified as either a mandatory interest, a support interest or a discretionary interest; and although not the exclusive means to create each such respective distribution interest, absent clear and convincing evidence to the contrary, use of the example language accompanying the following definitions of each such respective distribution interest results in the indicated classification of distribution interest:

(i) A mandatory interest means a distribution interest in which the timing of any distribution must occur within one (1) year from the date the right to the distribution arises and the trustee has no discretion in determining whether a distribution shall be made or the amount of such distribution; example distribution language indicating a mandatory interest includes, but is not limited to:

a. All income shall be distributed to a named beneficiary; or

b. One Hundred Thousand Dollars ($100,000.00) a year shall be distributed to a named beneficiary;

(ii) A support interest means a distribution interest that is not a mandatory interest but still contains mandatory language such as "shall make distributions" and is coupled with a standard capable of judicial interpretation; example distribution language indicating a support interest includes, but is not limited to:

a. The trustee shall make distributions for health, education, maintenance, and support;

b. Notwithstanding the distribution language used, if a trust instrument containing such distribution language specifically provides that the trustee exercise discretion in a reasonable manner with regard to a discretionary interest, then notwithstanding any other provision of this subparagraph defining distribution interests, the distribution interest shall be classified as a support interest;

(iii) A discretionary interest means any interest that is not a mandatory or a support interest and is any distribution interest where a trustee has any discretion to make or withhold a distribution; example distribution language indicating a discretionary interest includes, but is not limited to:

a. The trustee may, in the trustee's sole and absolute discretion, make distributions for health, education, maintenance, and support;

b. The trustee, in the trustee's sole and absolute discretion, shall make distributions for health, education, maintenance, and support;

c. The trustee may make distributions for health, education, maintenance, and support;

d. The trustee shall make distributions for health, education, maintenance, and support; however, the trustee may exclude any of the beneficiaries or may make unequal distributions among them; or

e. The trustee may make distributions for health, education, maintenance, support, comfort, and general welfare;

f. A discretionary interest may also be evidenced by:

1. Permissive distribution language such as "may make distributions";

2. Mandatory distribution language that is negated by the discretionary distribution language contained in the trust such as "the trustee shall make distributions in the trustee's sole and absolute discretion";

g. An interest that includes mandatory distribution language such as "shall" but is subsequently qualified by discretionary distribution language shall be classified as a discretionary interest and not as a support or a mandatory interest;

(C)(i) To the extent a trust contains distribution language indicating the existence of any combination of a mandatory, support and discretionary interest, that combined interest of the trust shall be divided and treated separately as follows:

a. The trust shall be a mandatory interest only to the extent of the mandatory distribution language;

b. The trust shall be a support interest only to the extent of such support distribution language; and

c. The remaining trust property shall be held as a discretionary interest;

(ii) For purposes of this subparagraph (C), a support interest that includes mandatory distribution language such as "shall" but is subsequently qualified by discretionary distribution language, shall be classified as a discretionary interest and not as a support interest.

(10) "Environmental law" means a federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment.

(11) "Excluded fiduciary" means any trustee, trust advisor, or trust protector to the extent that, under the terms of a trust:

(A) The trustee, trust advisor, or trust protector is excluded from exercising a power, or is relieved of a duty; and

(B) The power or duty is granted or reserved to another person.

(12) "Fiduciary" means:

(A) A trustee, conservator, guardian, agent under any agency agreement or other instrument, an executor, personal representative or administrator of a decedent's estate, or any other party, including a trust advisor or a trust protector, who is acting in a fiduciary capacity for any person, trust, or estate;

(B) For purposes of subparagraph (A), an agency agreement includes, but is not limited to, any agreement under which any delegation is made, either pursuant to Section 91-8-807 or by anyone holding a power or duty pursuant to Article 12;

(C) For purposes of the definition of fiduciary in Section 91-8-103, fiduciary does not mean any person who is an excluded fiduciary as such is defined in Section 91-8-103.

(13) "Guardian" means a person appointed by the court to make decisions regarding the support, care, education, health, and welfare of a minor or adult individual as defined in Section 93-20-102. The term does not include a guardian ad litem.

(14) "Interests of the beneficiaries" means the beneficial interests provided in the terms of the trust.

(15) "Internal Revenue Code" means the Internal Revenue Code of 1986, as in effect on July 1, 2014, or as later amended.

(16) "Jurisdiction," with respect to a geographic area, includes a state or country.

(17) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation, or any other legal or commercial entity.

(18) "Power of appointment" means:

(A) An inter vivos or testamentary power to direct the disposition of trust property, other than a distribution decision made by a trustee or other fiduciary to a beneficiary;

(B) Powers of appointment are held by the person to whom such power has been given, and not by a settlor in that person's capacity as settlor.

(19) "Power of withdrawal" means a presently exercisable general power of appointment other than a power: (A) exercisable by a trustee and limited by an ascertainable standard; or (B) exercisable by another person only upon consent of the trustee or a person holding an adverse interest.

(20) "Property" means anything that may be the subject of ownership, whether real or personal, legal or equitable, or any interest therein.

(21) "Qualified beneficiary" means a beneficiary who, on the date the beneficiary's qualification is determined:

(A) Is a distributee or permissible distributee of trust income or principal;

(B) Would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in subparagraph (A) terminated on that date without causing the trust to terminate; or

(C) Would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

(22) "Remainder interest" means an interest under which a trust beneficiary will receive property held by a trust outright at some time during the future.

(23) “Reserved power” means a power held by a settlor.

(24) “Revocable,” as applied to a trust, means revocable by the settlor without the consent of the trustee or a person holding an adverse interest.

(25) “Settlor” means a person, including a testator, who creates, or contributes property to, a trust. If more than one (1) person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to that person’s contribution except to the extent another person has the power to revoke or withdraw that portion.

(26) “Spendthrift provision” means a term of a trust which restrains both voluntary and involuntary transfer of a beneficiary’s interest.

(27) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band recognized by federal law or formally acknowledged by a state.

(28) “Successors in interest” means the beneficiaries under the settlor’s will, if the settlor has a will, or in the absence of an effective will provision, the settlor’s heirs at law.

(29) “Terms of a trust” means the manifestation of the settlor’s intent regarding a trust’s provisions as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding.

(30) “Trust advisor” means any person described in Section 91-8-1201(a).

(31) “Trust instrument” means an instrument executed by the settlor that contains terms of the trust, including any amendments thereto.

(32) “Trustee” includes an original, additional, and successor trustee, and a cotrustee.

(33) “Trust protector” means any person described in Section 91-8-1201(a).

HISTORY: Laws, 2014, ch. 421, § 3, Laws, 2016, ch. 396, § 1, eff from and after July 1, 2014; Laws, 2019, ch. 463, § 8, eff from and after January 1, 2020.

Amendment Notes — The 2019 amendment, effective January 1, 2020, substituted “as defined in Section 93-20-102” for “pursuant to Section 93-13-251” in (7); and in the first sentence of (13), deleted “pursuant to Section 93-13-13 or a parent” following “appointed by the court” and added “as defined in Section 93-20-102” at the end.

§ 91-8-105. Default and mandatory rules.

(a) Except as otherwise provided in the terms of the trust, this chapter governs the duties and powers of a trustee or any other fiduciary under this chapter, relations among trustees and such other fiduciaries, and the rights and interests of a beneficiary. The terms of a trust may expand, restrict, eliminate, or otherwise vary the duties and powers of a trustee, any such other fiduciary, relations among any of them, and the rights and interests of a beneficiary; however, nothing contained in this subsection shall be construed to override or nullify the provisions of subsection (b). The rule of statutory construction that statutes in derogation of the common law are to be strictly construed shall have no application to this section. Except as restricted by subsection (b), pursuant to this section, courts shall give maximum effect to the principal of freedom of disposition and to the enforceability of trust instruments.

(b) The terms of a trust prevail over any provision of this chapter except:

(1) The requirements for creating a trust;

(2) The duty of a trustee to act in good faith in accordance with the terms and purposes of the trust and the interests of the beneficiaries;

(3) The requirement that a trust and its terms be for the benefit of its beneficiaries as the interests of such beneficiaries are defined under the terms of the trust, and that the trust have a purpose that is lawful and possible to achieve;

(4) The power of the court to modify or terminate a trust under Sections 91-8-410 through 91-8-416;

(5) The effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in Article 5 of the Uniform Trust Code (Title 91, Chapter 8, Article 5, Mississippi Code of 1972);

(6) The power of the court under Section 91-8-702 to require, dispense with, or modify or terminate a bond;

(7) The power of the court under Section 91-8-708(b) to adjust a trustee's compensation specified in the terms of the trust which is unreasonably low or high;

(8) Subject to subsection (d), the duty under Section 91-8-813(b) to notify beneficiaries of an irrevocable trust (including anyone who holds a power of appointment) who have attained twenty-five (25) years of age that the trust has been established as set forth in Section 91-8-813(b);

(9) Subject to subsection (d), the duty under Section 91-8-813(a)(1) and (2) to keep the beneficiaries (including anyone who holds a power of appointment) informed and to respond to the request of a beneficiary of an irrevocable trust for trustee's reports and other information reasonably related to the administration of the trust;

(10) The effect of an exculpatory term under Section 91-8-1008;

(11) The rights under Sections 91-8-1010 through 91-8-1013 of a person other than a trustee or beneficiary;

(12) Periods of limitation for commencing a judicial proceeding;

(13) The power of the court to take such action and exercise such jurisdiction as may be necessary in the interests of justice; and

(14) The subject-matter jurisdiction of the court and venue for commencing a proceeding as provided in Sections 91-8-203 and 91-8-204.

(c) Any purpose enunciated as a material purpose of a trust in that trust's trust instrument shall be treated as a material purpose of that trust for all purposes of this chapter.

(d) Notwithstanding subsection (b)(8) and (9) of this section, the duties of a trustee to give notice, information and reports under Section 91-8-813(a) and

(b) may be waived or modified in the trust instrument or by the settlor of the trust, or a trust protector or trust advisor that holds the power to so direct, directs otherwise in a writing delivered to the trustee in any of the following ways:

(1) By waiving or modifying such duties as to all qualified beneficiaries during the lifetime of the settlor or the settlor's spouse;

(2) By specifying a different age at which a beneficiary or class of beneficiaries must be notified under Section 91-8-813(b); or

(3) With respect to one or more of the beneficiaries, by designating a beneficiary surrogate to receive such notice, information and reports who will act in good faith to protect the interests of the beneficiary or beneficiaries.

HISTORY: Laws, 2014, ch. 421, § 5, Laws, 2016, ch. 396, § 2, eff from and after July 1, 2014; Laws, 2020, ch. 406, § 86, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment, in (a)(5), substituted "Article 5 of the Uniform Trust Code (Title 91, Chapter 8, Article 5, Mississippi Code of 1972)" for "the Family Trust Preservation Act, Section 91-9-501 et seq."; and in (a)(8), deleted "that" following "set forth in."

ARTICLE 5.

CREDITOR'S CLAIMS; SPENDTHRIFT AND DISCRETIONARY TRUSTS.

Sec.

91-8-501. Application of Article 5; rights of beneficiary's creditor or assignee.
91-8-502. Spendthrift provision.
91-8-503. Discretionary interests; effect thereof.
91-8-504. Creditors' claims against settlor.
91-8-505. Distributions relative to support, mandatory and certain remainder interests.
91-8-506. Personal obligations of trustee.
91-8-507. Removal or replacement power over trustee or other fiduciary not reachable by holder's creditors; interests of beneficiary who is also a trustee or other fiduciary not reachable.
91-8-508. Judicial foreclosure of beneficial interests, powers of appointment, and reserved powers prohibited; certain reaches prohibited.

91-8-501. Application of Article 5; rights of beneficiary's creditor or assignee.

This Article 5 applies to a creditor's or assignee's claims and ability to reach mandatory, support and discretionary interests regardless of whether such interests are subject to a spendthrift provision. To the extent not otherwise prohibited by this Article 5, the court may authorize a creditor or assignee of the beneficiary to reach the beneficiary's distribution interest by attachment of present or future distributions to or for the benefit of the beneficiary or other means. The court may limit the award to such relief as is appropriate under the circumstances.

HISTORY: Laws, 2020, ch. 406, § 59, eff from and after July 1, 2020.

§ 91-8-502. Spendthrift provision.

(a) Except as provided in Section 91-8-505, if the trust instrument provides that a beneficiary's interest in a trust is not subject to voluntary or involuntary transfer, the beneficiary's interest in the trust may not be transferred and is not subject to the enforcement of a money judgment until paid to the beneficiary.

(b) A term of a trust providing that the interest of a beneficiary is held subject to a "spendthrift trust," or words of similar import, is sufficient to restrain both voluntary and involuntary transfer of the beneficiary's interest.

(c) A spendthrift provision applies to all beneficial interests, including distribution interests whether with respect to income or principal or both, and remainder interests.

(d) A beneficiary may not transfer an interest in a trust in violation of a valid spendthrift provision, and a creditor or assignee of the beneficiary may not reach the interest or a present, future or prospective distribution by the trustee before its receipt by the beneficiary. Similarly, a creditor or assignee of the beneficiary may not force a distribution from the trust. This subsection (d) remains applicable regardless of the beneficiary's potential right to force a distribution under Section 91-8-814.

(e) Notwithstanding any other provision of this section to the contrary or whether a beneficiary has an outstanding creditor, a trustee, cotrustee, or other fiduciary of a trust subject to a spendthrift provision may directly pay any expense on behalf of the beneficiary and may exhaust the income and principal of the trust for the benefit of the beneficiary. A trustee, cotrustee or other fiduciary is not liable to any creditor for paying the expenses of a beneficiary under a trust subject to a spendthrift provision. This subsection (e) remains applicable whether the beneficiary for whom the direct payment was made held a mandatory, support, discretionary or remainder interest.

HISTORY: Laws, 2020, ch. 406, § 60, eff from and after July 1, 2020.

§ 91-8-503. Discretionary interests; effect thereof.

(a) A discretionary interest is neither a property interest nor an enforceable right; it is a mere expectancy.

(b) Relative to a discretionary interest, whether or not a trust contains a spendthrift provision:

(1) A creditor or assignee cannot force or otherwise reach a distribution with regard to a discretionary interest;

(2) A creditor or assignee cannot require a trustee, cotrustee or other fiduciary to exercise the trustee's, cotrustee's or other fiduciary's discretion to make a distribution with regard to a discretionary interest;

(3) Whether or not a beneficiary has any outstanding creditors or assignees, a trustee, cotrustee or other fiduciary of a discretionary interest

may directly pay any expense on behalf of the beneficiary and may exhaust the income and principal of the trust for the benefit of the beneficiary;

(4) A trustee, cotrustee or other fiduciary is not liable to any creditor or assignee for paying the expenses of a beneficiary of a discretionary interest;

(5)(A) Whether or not a beneficiary holding a discretionary interest is also a trustee, cotrustee or other fiduciary, subsections (b)(1) through (4) remain applicable if:

(i) The beneficiary-fiduciary does not have the discretion to make or participate in making distributions to such beneficiary-fiduciary;

(ii) The beneficiary-fiduciary's discretion to make or participate in making distributions to such beneficiary-fiduciary is limited by an ascertainable standard; or

(iii) The beneficiary-fiduciary's discretion to make or participate in making distributions to such beneficiary-fiduciary is exercisable only with the consent of a cotrustee or another person holding an adverse interest.

(B) A creditor or assignee may compel or otherwise reach a distribution only to the extent the creditor or assignee may compel or otherwise reach a distribution if the beneficiary was not acting as a trustee, cotrustee or other fiduciary.

HISTORY: Laws, 2020, ch. 406, § 61, eff from and after July 1, 2020.

§ 91-8-504. Creditors' claims against settlor.

(a) Whether or not the terms of a trust contain a spendthrift provision, the following rules apply:

(1) During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors.

(2) Except as provided in the Mississippi Qualified Disposition in Trust Act and subsections (a)(3) through (5) regarding an irrevocable special needs trust, a creditor or assignee of the settlor of an irrevocable trust may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one (1) settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.

(3) For the purposes of this section, "irrevocable special needs trust" means an irrevocable trust established for the benefit of one or more disabled persons, which includes, but is not limited to, an individual who is disabled as defined in 42 U.S.C. Section 1382c(a), as well as an individual who is disabled as defined in any similar federal, state or other jurisdictional law or regulation, or has a condition that is substantially equivalent to one that qualifies the person as disabled under such a provision, even if not officially found to be disabled by a governmental body, if one (1) of the purposes of the trust, expressed in the trust instrument or implied from the trust instrument, is to allow the disabled person to qualify or continue to qualify for public, charitable or private benefits that might otherwise be available to the

disabled person. The existence of one or more nondisabled remainder beneficiaries of the trust does not disqualify it as an irrevocable special needs trust for the purposes of this section.

(4) A creditor or assignee of the settlor of an irrevocable special needs trust, as defined in subsection (a)(3), may not reach or compel distributions from the special needs trust, to or for the benefit of the settlor of the special needs trust, or otherwise, whether or not the irrevocable special needs trust complies with, and irrespective of the requirements of, the Mississippi Qualified Disposition in Trust Act.

(5) Notwithstanding any law to the contrary, neither a creditor nor any other person shall have any claim or cause of action against the trustee or other fiduciary, or an advisor of an irrevocable special needs trust. For purposes of this subsection (a)(5), an advisor of an irrevocable special needs trust includes any person involved in the counseling, drafting, preparation, execution or funding of an irrevocable special needs trust.

(6) After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that was revocable immediately preceding the settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, and the expenses of the settlor's funeral and disposal of remains subject to the following:

(A) With respect to claims, expenses, and taxes in connection with the settlement of the settlor's estate, any claim of a creditor that would be barred against the fiduciary of a settlor's estate, the estate of the settlor, or any creditor or beneficiary of the settlor's estate shall be barred against the trust property of a trust that was revocable at the settlor's death, the trustee of the revocable trust, and the creditors and beneficiaries of the trust.

(B) Unless a personal representative of the settlor's estate has been appointed or an application or petition for appointment of a personal representative of the settlor's estate is pending, the trustee at any time may give notice to any person the trustee has reason to believe may have a claim against the settlor at death, at the claimant's last known address. The notice shall contain the name and address of the trustee to whom the claim must be presented and provide information that failure to present the claim to the trustee within ninety (90) days of the date of the notice will forever bar the claim. If the person fails to present the claim in writing within ninety (90) days from the date of the notice, then the person is forever barred from asserting or recovering on the claim from the trustee, the trust property and the creditors and beneficiaries of the trust. A person who presents a claim on or before the date specified in the notice may not later increase the claim following the expiration of the ninety-day period.

(C) Unless a personal representative of the settlor's estate has been appointed or an application or petition for appointment of a personal representative of the settlor's estate is pending, a trustee may also publish in some newspaper in the county of the decedent's last residence a notice requiring all persons having unknown claims against the settlor to present their claims to the trustee, which notice shall state that failure to present the claim to the trustee within ninety (90) days of the date after the first publication of the notice will forever bar the claim. The notice must be published for three (3) consecutive weeks, and proof of publication must be maintained with the books and records of the trust. If a person fails to present a claim in writing within ninety (90) days from the date of first publication, that person shall be forever barred from asserting or recovering on the claim from the trustee, the trust property and the creditors and beneficiaries of the trust. A person who presents a claim on or before ninety (90) days from first publication may not later increase the claim following the expiration of the ninety-day period.

(D) In addition to subsection (a)(6)(B) and (a)(6)(C), if a claim is not presented in writing to the personal representative of the settlor's estate or to the trustee: (i) within six (6) months from the date of the appointment of the initial personal representative of the settlor's estate; or (ii) if no personal representative is appointed within six (6) months from the settlor's date of death and a claim is not presented in writing to the trustee within six (6) months from the settlor's date of death, a trustee is not chargeable for any assets that the trustee may pay or distribute in good faith in satisfaction of any lawful claims, expenses, or taxes or to any beneficiary before the claim was presented. A payment or distribution of assets by a trustee is deemed to have been made in good faith unless the creditor can prove that the trustee had actual knowledge of the claim at the time of the payment or distribution. The six-month period shall not be interrupted or affected by the death, resignation, or removal of a trustee, except that the time during which there is no trustee in office shall not be counted as part of the period.

(E) A claim presented to the trustee under subsection (a)(6)(B) or (a)(6)(C) must contain substantially the same information as required in Section 91-7-149.

(F) The provisions of Section 91-7-261 detailing the priority of payment of claims, expenses, and taxes from the probate estate of a decedent apply to a revocable trust to the extent the assets of the settlor's probate estate are inadequate and the personal representative or creditor or taxing authority of the settlor's estate has perfected its right to collect from the settlor's revocable trust.

(G) If a personal representative has been appointed for the settlor's estate, assets of the trust shall abate pari passu with assets of the settlor's estate. If no personal representative has been appointed for the settlor's estate, assets of the trust shall abate in the same order of preference as would apply to a decedent's estate.

(H) Nothing in this paragraph (6) obligates a trustee to seek appointment of a personal representative of a settlor's estate, and a trustee is not liable to any beneficiary or other third party for failure to do so.

(b) For purposes of this section during the period a power of withdrawal may be exercised or upon the lapse, release, or waiver of the power, the holder is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of:

(1) The amount specified in Section 2041(b)(2) or 2514(e) of the Internal Revenue Code of 1986 (26 U.S.C. Section 2041(b)(2) and Section 2514(e));

(2) If the donor of the property subject to holder's power of withdrawal is not married at the time of the transfer of property to the trust, the amount specified in Section 2503(b) of the Internal Revenue Code of 1986 (26 U.S.C. Section 2503(b)); or

(3) If the donor of the property subject to holder's power of withdrawal is married at the time of the transfer of property to the trust, twice the amount specified in Section 2503(b) of the Internal Revenue Code of 1986 (26 U.S.C. Section 2503(b)).

(4) A power to withdraw is not considered to exceed the greater of the amounts specified in subsection (b)(1) through (3) if the amount subject to a withdrawal right granted to the holder in any calendar year does not exceed the greater of such amounts even if the total amount subject to the holder's power to withdraw exceeds the greater of such amounts in any subsequent calendar year.

(5) Except to the extent provided in this subsection (b), a person who is the holder of a power of withdrawal is not considered a settlor of the trust by failing to exercise the power of withdrawal, releasing the power of withdrawal, or waiving the power of withdrawal.

(c) For purposes of subsection (a)(2), the following are not considered an amount that may be distributed to or for the settlor's benefit:

(1) The power of a trustee of an irrevocable trust, whether arising under the trust agreement or any other provision of law, to make a distribution to or for the benefit of a settlor for the purpose of reimbursing the settlor in an amount equal to any income taxes payable on any portion of the trust principal and income that are includable in the settlor's personal income under applicable law, as well as distributions made by the trustee under such authority; and

(2) The power of the settlor to exercise any of the powers described in Section 675 of the Internal Revenue Code of 1986 (26 U.S.C. Section 675).

(d) Property contributed to the following trusts is not considered to have been contributed by the settlor, and a person who would otherwise be treated as a settlor or deemed settlor of the following trusts may not be treated as a settlor:

(1) An irrevocable inter vivos marital trust if:

(A) The settlor is a beneficiary of the trust after the death of the settlor's spouse; and

(B) The trust is treated as:

(i) Qualified terminable interest property under Section 2523(f), Internal Revenue Code of 1986; or

(ii) A general power of appointment trust under Section 2523(e), Internal Revenue Code of 1986;

(2) An irrevocable inter vivos trust of which the settlor's spouse is a

beneficiary if the settlor is a beneficiary of the trust after the death of the settlor's spouse; or

(3) An irrevocable trust for the benefit of any person to the extent that the property of the trust was subject to a power of appointment in another person, whether the settlor's interest was created by the lapse or exercise of such power.

The effect of this subsection (d) shall be that the power of a trustee, and any benefit resulting to the settlor, whether arising under the trust agreement or any other provision of the law, to make a distribution to or for the benefit of a settlor or to otherwise permit the settlor to use or benefit from trust property following the death of the settlor's spouse, shall not be considered an amount that may be distributed to or for the settlor's benefit for purposes of subsection (a)(2).

(e) A beneficiary is not considered to be a settlor, to have made a voluntary or involuntary transfer of the beneficiary's interest in the trust, or to have the power to make a voluntary or involuntary transfer of the beneficiary's interest in the trust, merely because the beneficiary holds, exercises, waives, releases, or allows to lapse:

(1) A presently exercisable power to:

(A) Consume, invade, appropriate, or distribute property to or for the benefit of the beneficiary, if the power is:

(i) Exercisable only on consent of another person holding an interest adverse to the beneficiary's interest; or

(ii) Limited by an ascertainable standard, including health, education, support, or maintenance of the beneficiary;or

(B) Appoint any property of the trust to or for the benefit of a person other than the beneficiary, a creditor of the beneficiary, the beneficiary's estate, or a creditor of the beneficiary's estate;

(2) A testamentary power of appointment; or

(3) A presently exercisable right described by subsection (b).

(f) For purposes of subsection (a)(2) and subsection (g), a person who becomes a beneficiary of a trust due to the exercise of a power of appointment by someone other than such person shall not be considered a settlor of the trust.

(g)(1) Notwithstanding Section 15-3-115, no person shall bring an action with respect to a transfer of property to a spendthrift trust if the person is a creditor when the transfer is made, unless the action is commenced within the later of two (2) years after the transfer is made or six (6) months after the person discovers or reasonably should have discovered the transfer; and

(2) If subsection (g)(1) applies:

(A) A person is deemed to have discovered the existence of a transfer at the time any public record is made of the transfer, including, but not limited to, a conveyance of real property that is recorded in the office of the county register of deeds of the county in which the property is located or the filing of a financing statement Uniform Commercial Code, or the equivalent recording or filing of either with the appropriate person or official under the laws of a jurisdiction other than this state;

(B) A creditor cannot bring an action with respect to a transfer of property to a spendthrift trust unless that creditor proves by clear and convincing evidence that the settlor's transfer to the trust was made with the intent to defraud that specific creditor; and

(i) Notwithstanding any law to the contrary, a creditor or any other person does not have a claim or cause of action against the trustee, other fiduciary, or an advisor of a spendthrift trust if that claim or cause of action is based in any way on any person making use of the benefits of this subsection (g);

(ii) For purposes of subsection (g)(2)(B), an advisor of a spendthrift trust includes, but is not limited to, any person involved in the counseling, drafting, preparation, execution or funding of a spendthrift trust;

(iii) For purposes of subsection (g)(2)(B)(i), counseling, drafting, preparation, execution or funding of a spendthrift trust includes the counseling, drafting, preparation, execution and funding of a limited partnership, a limited liability company or any other type of entity if interests in the limited partnership, limited liability company or other entity are subsequently transferred to a spendthrift trust;

(3) Notwithstanding subsection (g)(2)(B), in the same manner as provided other than by this section to trusts in general, a beneficiary, settlor, cotrustee, trust advisor or trust protector retains the right to bring a claim against a trustee or against another cotrustee, trust advisor, trust protector or any of their predecessors; however, no such claim shall arise solely because a person used, or attempted to use, the benefits of this subsection (g);

(4) If more than one (1) transfer of property is made to a spendthrift trust, the subsequent transfer of property to the spendthrift trust shall be disregarded for the purpose of determining whether a person may bring an action under this subsection (g) with respect to a prior transfer of property to the spendthrift trust; any distribution to a beneficiary from the spendthrift trust shall be deemed to have been made from the most recent transfer made to the spendthrift trust;

(5) With the exception of a claim brought under subsection (g)(3), notwithstanding any other law, no action of any kind, including, without limitation, an action to enforce a judgment entered by a court or other body having adjudicative authority, shall be brought at law or in equity against the trustee, other fiduciary or advisor of a spendthrift trust if, as of the date the action is brought, an action by a creditor with respect to a transfer of property to the spendthrift trust would be barred under this subsection (g); and

(6) This subsection (g) shall not abridge the rights of a creditor, to the extent otherwise provided by this section, to reach the maximum amount that can be distributed to or for the settlor's benefit under a spendthrift trust.

HISTORY: Laws, 2020, ch. 406, § 62, eff from and after July 1, 2020.

§ 91-8-505. Distributions relative to support, mandatory and certain remainder interests.

(a) Relative to a support interest, whether or not a trust contains a spendthrift provision:

(1) Although a beneficiary of a support interest has enforceable rights under Section 91-8-814, those rights do not raise the beneficiary's support interest to the level of a property interest;

(2) No creditor or assignee shall reach that support interest until a distribution from the support interest is actually made to the beneficiary;

(3) After all or a portion of a support interest is distributed to the beneficiary, no portion of the distribution made from the support interest shall be reached by a creditor or assignee of the beneficiary except to the extent that the distribution made from the support interest exceeds the amount necessary for the health, education, maintenance and support of the beneficiary who received the distribution made from the support interest;

(4) In the case of a beneficiary who holds a support interest, the use or enjoyment of property belonging to the trust by that beneficiary shall not be transferred and shall not be reached by creditors or assignees of that beneficiary;

(5) Regardless of whether a beneficiary has any outstanding creditors or assignees, a trustee or other fiduciary of a support interest may directly pay any expense on behalf of the beneficiary and may exhaust the income and principal of the trust for the benefit of the beneficiary; and

(6) A trustee or other fiduciary is not liable to any creditor or assignee for paying the expenses of a beneficiary of a support interest.

(b) Relative to a mandatory interest, whether or not a trust contains a spendthrift provision:

(1) While a court may order a trustee or other fiduciary to distribute a past-due mandatory distribution to its beneficiary, no court shall order a trustee or other fiduciary to distribute such past-due mandatory distribution directly to a creditor or assignee;

(2) Regardless of whether a beneficiary has any outstanding creditors or assignees, a trustee or other fiduciary of a mandatory interest may directly pay any expense on behalf of the beneficiary and may exhaust the income and principal of the trust for the benefit of the beneficiary;

(3) A trustee or other fiduciary is not liable to any creditor or assignee for paying the expenses of a beneficiary of a mandatory interest.

(c) Although a remainder interest may be an enforceable right, where it is not absolutely certain based on the language of the trust that the remainder interest will be distributed within one (1) year, it shall not be classified as a property interest. This subsection (c) does not affect eligibility for any public assistance program administered by the Department of Human Services.

HISTORY: Laws, 2020, ch. 406, § 63, eff from and after July 1, 2020.

§ 91-8-506. Personal obligations of trustee.

Trust property is not subject to personal obligations of the trustee, even if the trustee becomes insolvent or bankrupt.

HISTORY: Laws, 2020, ch. 406, § 64, eff from and after July 1, 2020.

§ 91-8-507. Removal or replacement power over trustee or other fiduciary not reachable by holder's creditors; interests of beneficiary who is also a trustee or other fiduciary not reachable.

(a) A creditor or assignee of a beneficiary does not have the power to reach an interest of a beneficiary or any other person who holds an unconditional or conditional removal or replacement power over a trustee or other fiduciary. Such power over a trustee or other fiduciary is personal to the holder and shall not be exercised by the holder's creditors. No court shall direct a holder to exercise the power.

(b) Subject to Section 91-8-504(b)(3):

(1) A creditor or assignee of a beneficiary may not reach an interest of a beneficiary who is also a trustee, cotrustee or other fiduciary, or otherwise compel a distribution because the beneficiary is then serving as a trustee, cotrustee or other fiduciary; and

(2) A court may not foreclose against a beneficiary's interest described in subsection (a).

HISTORY: Laws, 2020, ch. 406, § 65, eff from and after July 1, 2020.

§ 91-8-508. Judicial foreclosure of beneficial interests, powers of appointment, and reserved powers prohibited; certain reaches prohibited.

Regardless of whether a trust contains a spendthrift provision:

(1) No beneficial interest, power of appointment, or reserved power in a trust shall be judicially foreclosed.

(2) Trust property subject to a power of appointment is not subject to the claims of the creditors of the holder of the power of appointment or to any permitted appointee unless and until such trust property is distributed pursuant to the exercise of such power of appointment and then only to the extent of the claims of the creditors of the appointee.

(3) A creditor or an assignee of a beneficiary of a residuary interest in a trust has no interest in trust property until trust property is actually distributed to such assignee of the residuary interest and therefore trust property is not subject to claims of a creditor of the assignee.

(4) A power of appointment is not a property interest.

HISTORY: Laws, 2020, ch. 406, § 66, eff from and after July 1, 2020.

CHAPTER 9.

TRUSTS AND TRUSTEES

Article 11. Family Trust Preservation Act of 1998 [Repealed]. 91-9-501

ARTICLE 11.

FAMILY TRUST PRESERVATION ACT OF 1998 [REPEALED].

Sec.
91-9-501 through 91-9-511. Repealed.

§§ 91-9-501 through 91-9-511. Repealed.

Repealed by Laws, 2020, ch. 406, § 89, eff from and after July 1, 2020.

§ 91-9-501. [Laws, 1998, ch. 460, § 1, eff from and after passage (approved March 23, 1998).]

§ 91-9-503. [Laws, 1998, ch. 460, § 2; Laws, 2014, ch. 513, § 13; Laws, 2016, ch. 396, § 12, eff from and after July 1, 2014.]

§ 91-9-505. [Laws, 1998, ch. 460, § 3; Laws, 2014, ch. 513, § 14; Laws, 2016, ch. 396, § 18, eff from and after July 1, 2014.]

§ 91-9-507. [Laws, 1998, ch. 460, § 4; Laws, 2014, ch. 513, § 15; Laws, 2016, ch. 396, § 14, eff from and after July 1, 2014.]

§ 91-9-509. [Laws, 2016, ch. 396, § 15, eff from and after July 1, 2014.]

§ 91-9-511. [Laws, 1998, ch. 460, § 6, eff from and after passage (approved March 23, 1998).]

Editor's Notes — Former § 91-9-501 defined terms under Article 11.

Former § 91-9-503 provided that beneficiary's interests not subject to transfer nor subject to enforcements of money judgments.

Former § 91-9-505 related to trust monies designated for education or support of beneficiary and restrictions on transfers and enforcements of money judgments.

Former § 91-9-507 made trust monies designated for payments in trustee's discretion; added restrictions and liability on payments to transferees or creditors; and allowed beneficiary's right to compel payments by trustee.

Former § 91-9-509 provided that where settlor is beneficiary of own trust, certain restraints on transfers are invalid and authorized payments for education or support at trustee's discretion, up to the maximum amount accessible by transferees or creditors.

Former § 91-9-511 provided applicability clause for the article.

CHAPTER 13.

FIDUCIARY INVESTMENTS

§ 91-13-8. Direct obligations of United States of America to include interests in certain open-end or closed-end

management type investment company or investment trust.

OPINIONS OF THE ATTORNEY GENERAL

Section 91-13-8 authorizes the investment of county bond proceeds in a money market mutual fund by a bank trustee, if the money market mutual fund is an open-end or closed-end management type investment company or investment trust registered under the provisions of 15 U.S.C. Section 80(a)-1 et seq. Zeagler, July 26, 2006, A.G. Op. 06-0313.

CHAPTER 17.

MISSISSIPPI PRINCIPAL AND INCOME ACT OF 2013

Article 4. Allocation of Receipts During Administration of Trust. ... 91-17-401
Article 5. Allocation of Disbursements During Administration of Trust. 91-17-501

ARTICLE 4.

ALLOCATION OF RECEIPTS DURING ADMINISTRATION OF TRUST.

Sec.
91-17-412. Timber.

§ 91-17-412. Timber.

(a) To the extent that a trustee accounts for receipts from the sale of timber and related products pursuant to this section, the trustee shall allocate the net receipts first to principal, based upon the volume of the timber at the time of transfer to the trust or decedent's estate. The balance shall be allocated eighty percent (80%) to income and the balance to principal.

(b) In determining net receipts to be allocated pursuant to subsection (a), a trustee shall deduct, including, but not limited to, the following expenses related to the sale of timber and related products from gross receipts:

(1) Management expenses;
(2) Legal and accounting expenses and fees;
(3) Sales commissions;
(4) Reforestation expenses; and
(5) Any necessary timber stand improvement expense that is recognized and accepted as good forest management practice at the time of sale.

(c) This chapter applies whether or not a decedent or transferor was harvesting timber from the property before it became subject to the trust.

(d) If a trust owns an interest in timberland on January 1, 2013, the trustee may allocate net receipts from the sale of timber and related products as provided in this chapter or in the manner used by the trustee before

January 1, 2013. If the trust acquires an interest in timberland after January 1, 2013, the trustee shall allocate net receipts from the sale of timber and related products as provided in this chapter.

HISTORY: Laws, 2012, ch. 351, § 1, eff from and after Jan. 1, 2013; Laws, 2020, ch. 343, § 5, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment rewrote (a), substituting "first to principal, based upon the volume of the timber at the time of transfer to the trust or decedent's estate" for former (1) through (4), and adding the last sentence; and in (b), substituted "including, but not limited to, the following expenses related to the sale of timber and related products from gross receipts" for "and transfer to principal a reasonable amount for depletion," and added (1) through (5).

ARTICLE 5.

ALLOCATION OF DISBURSEMENTS DURING ADMINISTRATION OF TRUST.

Sec.
91-17-501. Disbursements from income.

§ 91-17-501. Disbursements from income.

A trustee shall make the following disbursements from income to the extent that they are not disbursements to which Section 91-17-201(2)(B) or (C) applies:

(1) One-half (1/2) of the regular compensation of the trustee and of any person providing investment advisory or custodial services to the trustee;

(2) One-half (1/2) of all expenses for accountings, judicial proceedings, or other matters that involve both the income and remainder interests;

(3) All of the other ordinary expenses incurred in connection with the administration, management, or preservation of trust property and the distribution of income, including interest, ordinary repairs, regularly recurring taxes assessed against principal, and expenses of a proceeding or other matter that concerns primarily the income interest; and

(4) Recurring premiums on insurance covering the loss of a principal asset or the loss of income from or use of the asset.

With regard to subsections (1) and (2) of this section, a trustee may allocate more or less if income or principal is insufficient to satisfy this allocation during the year.

HISTORY: Laws, 2012, ch. 351, § 1, eff from and after Jan. 1, 2013; Laws, 2020, ch. 343, § 6, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment added the last paragraph.

CHAPTER 25.

MISSISSIPPI UNIFORM ESTATE TAX APPORTIONMENT ACT.

Sec.	
91-25-1.	Short title.
91-25-3.	Definitions.
91-25-5.	Apportionment by will or other dispositive instrument.
91-25-7.	Statutory apportionment of estate taxes.
91-25-9.	Credits and deferrals.
91-25-11.	Insulated property; advancement of tax.
91-25-13.	Apportionment and recapture of special elective benefits.
91-25-15.	Securing payment of estate tax from property in possession of fiduciary.
91-25-17.	Collection of estate tax by fiduciary.
91-25-19.	Right of reimbursement.
91-25-21.	Action to determine or enforce chapter.
91-25-23.	Uniformity of application and construction.
91-25-25.	Severability.
91-25-27.	Delayed application.

§ 91-25-1. Short title.

This chapter may be cited as the Mississippi Uniform Estate Tax Apportionment Act.

HISTORY: Laws, 2020, ch. 406, § 33, eff from and after July 1, 2020.

§ 91-25-3. Definitions.

In this chapter:

(1) "Apportionable estate" means the value of the gross estate as finally determined for purposes of the estate tax to be apportioned reduced by:

(A) Any claim or expense allowable as a deduction for purposes of the tax;

(B) The value of any interest in property that, for purposes of the tax, qualifies for a marital or charitable deduction or otherwise is deductible or is exempt; and

(C) Any amount added to the decedent's gross estate because of a gift tax on transfers made before death.

(2) "Chancery court" means the chancery court where the decedent's will is probated in the State of Mississippi.

(3) "Estate tax" means a federal, state, or foreign tax imposed because of the death of an individual and interest and penalties associated with the tax. The term does not include an inheritance tax, income tax, or generation-skipping transfer tax other than a generation-skipping transfer tax incurred on a direct skip taking effect at death.

(4) "Gross estate" means, with respect to an estate tax, all interests in property subject to the tax.

(5) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(6) "Ratable" means apportioned or allocated pro rata according to the relative values of interests to which the term is to be applied. "Ratably" has a corresponding meaning.

(7) "Time-limited interest" means an interest in property which terminates on a lapse of time or on the occurrence or nonoccurrence of an event or which is subject to the exercise of discretion that could transfer a beneficial interest to another person. The term does not include a cotenancy unless the cotenancy itself is a time-limited interest. The term also does not include an interest in property to the extent the beneficiary has the sole right to accelerate, require or elect to receive a distribution of the property.

(8) "Value" means, with respect to an interest in property, fair market value as finally determined for purposes of the estate tax that is to be apportioned, reduced by any outstanding debt secured by the interest without reduction for taxes paid or required to be paid or for any special valuation adjustment.

HISTORY: Laws, 2020, ch. 406, § 34, eff from and after July 1, 2020.

§ 91-25-5. Apportionment by will or other dispositive instrument.

(a) Except as otherwise provided in subsection (c), the following rules apply:

(1) To the extent that a provision of a decedent's will expressly and unambiguously directs the apportionment of an estate tax, the tax must be apportioned accordingly.

(2) Any portion of an estate tax not apportioned under paragraph (1) must be apportioned in accordance with any provision of a revocable trust of which the decedent was the settlor which expressly and unambiguously directs the apportionment of an estate tax. If conflicting apportionment provisions appear in two (2) or more revocable trust instruments, the provision in the most recently dated instrument prevails. For purposes of this paragraph:

(A) A trust is revocable if it was revocable immediately after the trust instrument was executed, even if the trust subsequently becomes irrevocable; and

(B) The date of an amendment to a revocable trust instrument is the date of the amended instrument only if the amendment contains an apportionment provision.

(3) If any portion of an estate tax is not apportioned under paragraph (1) or (2), and a provision in any other dispositive instrument expressly and unambiguously directs that any interest in the property disposed of by the instrument is or is not to be applied to the payment of the estate tax

attributable to the interest disposed of by the instrument, the provision controls the apportionment of the tax to that interest.

(b) Subject to subsection (c), and unless the decedent expressly and unambiguously directs the contrary, the following rules apply:

(1) If an apportionment provision directs that a person receiving an interest in property under an instrument is to be exonerated from the responsibility to pay an estate tax that would otherwise be apportioned to the interest, the tax attributable to the exonerated interest must be apportioned ratably among all the other persons receiving interests in the apportionable estate that are not exonerated from apportionment of the tax.

(2) If an apportionment provision directs that an estate tax is to be apportioned to an interest in property a portion of which qualifies for a marital or charitable deduction, the estate tax must first be apportioned ratably among the holders of the portion that does not qualify for a marital or charitable deduction and then apportioned ratably among the holders of the deductible portion to the extent that the value of the nondeductible portion is insufficient.

(3) Except as otherwise provided in paragraph (4), if an apportionment provision directs that an estate tax be apportioned to property in which one or more time-limited interests exist, other than interests in specified property under Section 91-25-13, the tax must be apportioned to the principal of that property, regardless of the deductibility of some of the interests in that property.

(4) If an apportionment provision directs that an estate tax is to be apportioned to the holders of interests in property in which one or more time-limited interests exist and a charity has an interest that otherwise qualifies for an estate tax charitable deduction, the tax must first be apportioned, to the extent feasible, to interests in property that have not been distributed to the persons entitled to receive the interests. No tax shall be paid from a charitable remainder annuity trust or charitable remainder unitrust described in Section 664 of the Internal Revenue Code (26 U.S.C. Section 664) and created during the decedent's life.

(c) A provision that apportions an estate tax is ineffective to the extent that it increases the tax apportioned to a person having an interest in the gross estate over which the decedent had no power to transfer immediately before the decedent executed the instrument in which the apportionment direction was made. For purposes of this subsection, a testamentary power of appointment is a power to transfer the property that is subject to the power.

HISTORY: Laws, 2020, ch. 406, § 35, eff from and after July 1, 2020.

§ 91-25-7. Statutory apportionment of estate taxes.

To the extent that apportionment of an estate tax is not controlled by an instrument described in Section 91-25-5 and except as otherwise provided in Sections 91-25-11 and 91-25-13, the following rules apply:

(1) Subject to paragraphs (2), (3) and (4), the estate tax is apportioned ratably to each person that has an interest in the apportionable estate.

(2) A generation-skipping transfer tax incurred on a direct skip taking effect at death is charged to the person to which the interest in property is transferred.

(3) If property is included in the decedent's gross estate because of Section 2044 of the Internal Revenue Code of 1986 or any similar estate tax provision, the difference between the total estate tax for which the decedent's estate is liable and the amount of estate tax for which the decedent's estate would have been liable if the property had not been included in the decedent's gross estate is apportioned ratably among the holders of interests in the property. The balance of the tax, if any, is apportioned ratably to each other person having an interest in the apportionable estate.

(4) Except as otherwise provided in Section 91-25-5(b)(4) and except as to property to which Section 91-25-13 applies, an estate tax apportioned to persons holding interests in property subject to a time-limited interest must be apportioned, without further apportionment, to the principal of that property.

HISTORY: Laws, 2020, ch. 406, § 36, eff from and after July 1, 2020.

§ 91-25-9. Credits and deferrals.

Except as otherwise provided in Sections 91-25-11 and 91-25-13, the following rules apply to credits and deferrals of estate taxes:

(1) A credit resulting from the payment of gift taxes or from estate taxes paid on property previously taxed inures ratably to the benefit of all persons to which the estate tax is apportioned.

(2) A credit for state or foreign estate taxes inures ratably to the benefit of all persons to which the estate tax is apportioned, except that the amount of a credit for a state or foreign tax paid by a beneficiary of the property on which the state or foreign tax was imposed, directly or by a charge against the property, inures to the benefit of the beneficiary.

(3) If payment of a portion of an estate tax is deferred because of the inclusion in the gross estate of a particular interest in property, the benefit of the deferral inures ratably to the persons to which the estate tax attributable to the interest is apportioned. The burden of any interest charges incurred on a deferral of taxes and the benefit of any tax deduction associated with the accrual or payment of the interest charge is allocated ratably among the persons receiving an interest in the property.

HISTORY: Laws, 2020, ch. 406, § 37, eff from and after July 1, 2020.

§ 91-25-11. Insulated property; advancement of tax.

(a) In this section:

(1) "Advanced fraction" means a fraction that has as its numerator the amount of the advanced tax and as its denominator the value of the interests in insulated property to which that tax is attributable.

(2) "Advanced tax" means the aggregate amount of estate tax attributable to interests in insulated property which is required to be advanced by uninsulated holders under subsection (c).

(3) "Insulated property" means property subject to a time-limited interest which is included in the apportionable estate but is unavailable for payment of an estate tax because of impossibility or impracticability.

(4) "Uninsulated holder" means a person who has an interest in uninsulated property.

(5) "Uninsulated property" means property included in the apportionable estate other than insulated property.

(b) If an estate tax is to be advanced under subsection (c) by persons holding interests in uninsulated property subject to a time-limited interest other than property to which Section 91-25-13 applies, the tax must be advanced, without further apportionment, from the principal of the uninsulated property.

(c) Subject to Section 91-25-17(b) and (d), an estate tax attributable to interests in insulated property must be advanced ratably by uninsulated holders. If the value of an interest in uninsulated property is less than the amount of estate taxes otherwise required to be advanced by the holder of that interest, the deficiency must be advanced ratably by the persons holding interests in properties that are excluded from the apportionable estate under Section 91-25-3(1)(B) as if those interests were in uninsulated property.

(d) A court having jurisdiction to determine the apportionment of an estate tax may require a beneficiary of an interest in insulated property to pay all or part of the estate tax otherwise apportioned to the interest if the court finds that it would be substantially more equitable for that beneficiary to bear the tax liability personally than for that part of the tax to be advanced by uninsulated holders.

(e) When a distribution of insulated property is made, each uninsulated holder may recover from the distributee a ratable portion of the advanced fraction of the property distributed. To the extent that undistributed insulated property ceases to be insulated, each uninsulated holder may recover from the property a ratable portion of the advanced fraction of the total undistributed property.

(f) Upon payment by an uninsulated holder of estate tax required to be advanced, a court may require the beneficiary of an interest in insulated property to provide a bond or other security, including a recordable lien on the property of the beneficiary, for repayment of the advanced tax.

HISTORY: Laws, 2020, ch. 406, § 38, eff from and after July 1, 2020.

§ 91-25-13. Apportionment and recapture of special elective benefits.

(a) In this section:

(1) "Special elective benefit" means a reduction in an estate tax obtained by an election for:

(A) A reduced valuation of specified property that is included in the gross estate;

(B) A deduction from the gross estate, other than a marital or charitable deduction, allowed for specified property; or

(C) An exclusion from the gross estate of specified property.

(2) "Specified property" means property for which an election has been made for a special elective benefit.

(b) If an election is made for one or more special elective benefits, an initial apportionment of a hypothetical estate tax must be computed as if no election for any of those benefits had been made. The aggregate reduction in estate tax resulting from all elections made must be allocated among holders of interests in the specified property in the proportion that the amount of deduction, reduced valuation, or exclusion attributable to each holder's interest bears to the aggregate amount of deductions, reduced valuations, and exclusions obtained by the decedent's estate from the elections. If the estate tax initially apportioned to the holder of an interest in specified property is reduced to zero, any excess amount of reduction reduces ratably the estate tax apportioned to other persons that receive interests in the apportionable estate.

(c) An additional estate tax imposed to recapture all or part of a special elective benefit must be charged to the persons that are liable for the additional tax under the law providing for the recapture.

HISTORY: Laws, 2020, ch. 406, § 39, eff from and after July 1, 2020.

§ 91-25-15. Securing payment of estate tax from property in possession of fiduciary.

(a) A fiduciary may defer a distribution of property until the fiduciary is satisfied that adequate provision for payment of the estate tax has been made.

(b) A fiduciary may withhold from a distributee an amount equal to the amount of estate tax apportioned to an interest of the distributee and the estate tax required to be advanced by the distributee.

(c) As a condition to a distribution, a fiduciary may require the distributee to provide a bond or other security for the portion of the estate tax apportioned to the distributee and also for the estate tax required to be advanced by the distributee.

HISTORY: Laws, 2020, ch. 406, § 40, eff from and after July 1, 2020.

§ 91-25-17. Collection of estate tax by fiduciary.

(a) A fiduciary responsible for payment of an estate tax may collect from any person the estate tax apportioned to and the tax required to be advanced by the person.

(b) Except as otherwise provided in Section 27-10-61, any estate tax due from a person that cannot be collected from the person may be collected by the fiduciary from other persons in the following order of priority:

(1) Any person having an interest in the apportionable estate which is not exonerated from the tax;

(2) Any other person having an interest in the apportionable estate; or

(3) Any person having an interest in the gross estate.

(c) A domiciliary fiduciary may recover from an ancillary personal representative the estate tax apportioned to the property controlled by the ancillary personal representative.

(d) The total tax collected from a person under this chapter may not exceed the value of the person's interest.

HISTORY: Laws, 2020, ch. 406, § 41, eff from and after July 1, 2020.

§ 91-25-19. Right of reimbursement.

(a) A person required under Section 91-25-17 to pay an estate tax greater than the amount due from the person under Section 91-25-5 or 91-25-7 has a right to reimbursement from another person to the extent that the other person has not paid the tax required by Section 91-25-5 or 91-25-7 and a right to reimbursement ratably from other persons to the extent that each has not contributed a portion of the amount collected under Section 91-25-17(b). The right to reimbursement includes the right to receive interest on the amount of the estate tax payment from the date of the payment to the date of reimbursement at the interest rate that would be charged during such period on an estate tax deficiency by the taxing authority that imposed the estate tax. The right of reimbursement also includes the reasonable costs of collection, including attorney's fees.

(b) A fiduciary may enforce the right of reimbursement under subsection (a) on behalf of the person that is entitled to the reimbursement and shall take reasonable steps to do so if requested by the person.

HISTORY: Laws, 2020, ch. 406, § 42, eff from and after July 1, 2020.

§ 91-25-21. Action to determine or enforce chapter.

(a) The chancery court has jurisdiction and all power necessary to make the prorations and the orders directing the payment of amounts of tax contemplated by this chapter.

(b) Such jurisdiction may be invoked by petition filed in the chancery court by an executor, administrator, temporary administrator, trustee or other person acting in a fiduciary capacity, transferee, beneficiary of the gross estate, or any other person having such an interest as may in the judgment of the chancery court entitle such person to file such a petition.

(c) The chancery court, upon making a determination as provided in this chapter, shall make a decree or order directing the executor, administrator or other fiduciary to charge the prorated amounts against the persons against whom the tax has been so prorated, insofar as such person is in possession of property or interests of such persons against whom such charge has been made, and summarily directing all other persons against whom the tax has been so prorated or who are in possession of property or interests of such persons to make payment of such prorated amounts to such executor, administrator or other fiduciary or to another person who has paid such tax.

HISTORY: Laws, 2020, ch. 406, § 43, eff from and after July 1, 2020.

§ 91-25-23. Uniformity of application and construction.

In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

HISTORY: Laws, 2020, ch. 406, § 44, eff from and after July 1, 2020.

§ 91-25-25. Severability.

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

HISTORY: Laws, 2020, ch. 406, § 45, eff from and after July 1, 2020.

§ 91-25-27. Delayed application.

(a) This chapter does not apply to the estate of a decedent who dies on or within one (1) year after July 1, 2020, nor with respect to a decedent who dies more than one (1) year after July 1, 2020, if the decedent continuously lacked testamentary capacity from the expiration of the one-year period until the date of death.

(b) With respect to a decedent who dies on or after July 1, 2020, to whom this chapter does not apply, estate taxes must be apportioned under the law in effect on the day before July 1, 2020.

(c) Notwithstanding the provisions of subsection (a) and (b), this chapter applies with respect to a decedent to whom the provisions would not otherwise apply if the decedent expressly and unambiguously directs that the provisions shall apply to such decedent.

HISTORY: Laws, 2020, ch. 406, § 46, eff from and after July 1, 2020.

CHAPTER 27.

MISSISSIPPI REAL PROPERTY TRANSFER-ON-DEATH ACT

Sec.
91-27-1. Short title.

Sec.
91-27-3. Definitions.
91-27-5. Applicability.
91-27-7. Nonexclusivity.
91-27-9. Transfer-on-death deed authorized.
91-27-11. Transfer-on-death deed revocable.
91-27-13. Transfer-on-death deed nontestamentary.
91-27-15. Capacity of transferor.
91-27-17. Requirements.
91-27-19. Notice, delivery, acceptance, consideration not required.
91-27-21. Revocation by instrument authorized; revocation by act not permitted.
91-27-23. Effect of transfer-on-death deed during transferor's life.
91-27-25. Effect of subsequent conveyance on transfer-on-death deed.
91-27-27. Effect of transfer-on-death deed at transferor's death.
91-27-29. Transfer-on-death deed property subject to liens and encumbrances at transferor's death; creditors' claims.
91-27-31. Disclaimer.
91-27-33. Optional form for transfer-on-death deed.
91-27-35. Optional form of revocation.
91-27-37. Relation to Electronic Signatures in Global and National Commerce Act.

§ 91-27-1. Short title.

This chapter may be cited as the Mississippi Real Property Transfer-On-Death Act.

HISTORY: Laws, 2020, ch. 406, § 1, eff from and after July 1, 2020.

§ 91-27-3. Definitions.

(a) "Beneficiary" means a person who receives real property under a transfer-on-death deed.

(b) "Designated beneficiary" means a person designated to receive real property in a transfer-on-death deed.

(c) "Joint owner with right of survivorship" or "joint owner" means an individual who owns real property concurrently with one or more other individuals with a right of survivorship. The term includes a joint tenant and a tenant by the entirety. The term does not include a tenant in common.

(d) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(e) "Real property" means an interest in real property located in this state.

(f) "Transfer-on-death deed" means a deed authorized under this chapter and does not refer to any other deed that transfers an interest in real property on the death of an individual.

(g) "Transferor" means an individual who makes a transfer-on-death deed.

(h) In this chapter, the terms "cancel" and "revoke" are synonymous.

HISTORY: Laws, 2020, ch. 406, § 2, eff from and after July 1, 2020.

§ 91-27-5. Applicability.

This chapter applies to a transfer-on-death deed executed and acknowledged on or after July 1, 2020, by a transferor who dies on or after July 1, 2020.

HISTORY: Laws, 2020, ch. 406, § 3, eff from and after July 1, 2020.

§ 91-27-7. Nonexclusivity.

This chapter does not affect any method of transferring real property otherwise permitted under the laws of this state.

HISTORY: Laws, 2020, ch. 406, § 4, eff from and after July 1, 2020.

§ 91-27-9. Transfer-on-death deed authorized.

An individual may transfer the individual's interest in real property to one or more beneficiaries effective at the transferor's death by a transfer-on-death deed.

HISTORY: Laws, 2020, ch. 406, § 5, eff from and after July 1, 2020.

§ 91-27-11. Transfer-on-death deed revocable.

A transfer-on-death deed must be executed as set forth in Title 89, Chapter 3, Mississippi Code or 1972, relating to necessary acknowledgements, and need not be executed with the formalities of a will.

HISTORY: Laws, 2020, ch. 406, § 6, eff from and after July 1, 2020.

§ 91-27-13. Transfer-on-death deed nontestamentary.

A transfer-on-death deed is a nontestamentary instrument.

HISTORY: Laws, 2020, ch. 406, § 7, eff from and after July 1, 2020.

§ 91-27-15. Capacity of transferor.

(a) The capacity required to make or revoke a transfer-on-death deed is the same as the capacity required to make a contract.

(b) A transfer-on-death deed may not be created through use of a power of attorney unless the transfer of real property through a transfer-on-death deed is specifically authorized in the power of attorney.

HISTORY: Laws, 2020, ch. 406, § 8, eff from and after July 1, 2020.

§ 91-27-17. Requirements.

To be effective, a transfer-on-death deed must:

(1) Except as otherwise provided in subsection (2), contain the essential elements and formalities of a recordable deed;

(2) State that the transfer of an interest in real property to the designated beneficiary is to occur at the transferor's death;

(3) Be recorded before the transferor's death in the deed records in the official records of the chancery clerk of the county where the real property is located.

HISTORY: Laws, 2020, ch. 406, § 9, eff from and after July 1, 2020.

§ 91-27-19. Notice, delivery, acceptance, consideration not required.

A transfer-on-death deed is effective without:

(1) Notice or delivery to or acceptance by the designated beneficiary during the transferor's life; or

(2) Consideration.

HISTORY: Laws, 2020, ch. 406, § 10, eff from and after July 1, 2020.

§ 91-27-21. Revocation by instrument authorized; revocation by act not permitted.

(a) Subject to subsections (d) and (e), an instrument is effective to revoke a recorded transfer-on-death deed, or any part of it, if the instrument:

(1) Is one (1) of the following:

(A) A subsequent transfer-on-death deed that revokes the preceding transfer-on-death deed or part of the deed expressly or by inconsistency; or

(B) Except as provided by subsection (b), an instrument of revocation that expressly revokes the transfer-on-death deed or part of the deed;

(2) Is acknowledged by the transferor after the acknowledgment of the deed being revoked; and

(3) Is recorded before the transferor's death in the official records of the chancery clerk of the county where the deed being revoked is recorded.

(b) A will does not revoke or supersede a transfer-on-death deed.

(c) If a marriage between the transferor and a designated beneficiary is dissolved after a transfer-on-death deed is recorded, a final judgment of the court dissolving the marriage operates to revoke the transfer-on-death deed as to that designated beneficiary.

(d) If a transfer-on-death deed is made by more than one (1) transferor, revocation by a transferor does not affect the deed as to the interest of another transferor who does not make that revocation.

(e) A transfer-on-death deed made by joint owners with right of survivorship is revoked only if it is revoked by all of the living joint owners.

(f) This section does not limit the effect of an inter vivos transfer of the real property.

HISTORY: Laws, 2020, ch. 406, § 11, eff from and after July 1, 2020.

§ 91-27-23. Effect of transfer-on-death deed during transferor's life.

During a transferor's life, a transfer-on-death deed does not:

(1) Affect an interest or right of the transferor or any other owner, including:

(A) The right to transfer or encumber the real property that is the subject of the deed;

(B) Homestead rights in the real property, if applicable; and

(C) Ad valorem tax exemptions, including exemptions for residence homestead, persons sixty-five (65) years of age or older, persons with disabilities, and veterans;

(2) Affect an interest or right of a transferee of the real property that is the subject of the deed, even if the transferee has actual or constructive notice of the deed;

(3) Affect an interest or right of a secured or unsecured creditor or future creditor of the transferor, even if the creditor has actual or constructive notice of the deed;

(4) Affect the transferor's or designated beneficiary's eligibility for any form of public assistance, subject to applicable federal law;

(5) Constitute a transfer triggering a "due-on-sale" or similar clause;

(6) Invoke statutory real estate notice or disclosure requirements;

(7) Create a legal or equitable interest in favor of the designated beneficiary; or

(8) Subject the real property to claims or process of a creditor of the designated beneficiary.

HISTORY: Laws, 2020, ch. 406, § 12, eff from and after July 1, 2020.

§ 91-27-25. Effect of subsequent conveyance on transfer-on-death deed.

An otherwise valid transfer-on-death deed is void as to any interest in real property that is conveyed by the transferor during the transferor's lifetime after the transfer-on-death deed is executed and recorded if:

(1) A valid instrument conveying the interest is recorded in the official records of the chancery clerk of the same county in which the transfer-on-death deed is recorded; and

(2) The recording of the instrument occurs before the transferor's death.

HISTORY: Laws, 2020, ch. 406, § 13, eff from and after July 1, 2020.

§ 91-27-27. Effect of transfer-on-death deed at transferor's death.

On the death of the transferor, the following rules apply to an interest in real property that is the subject of a transfer-on-death deed and owned by the transferor at death except as otherwise provided: in the transfer-on-death deed; in this chapter; in Title 91, Chapter 29, Mississippi Code of 1972, relating to revocation by divorce; in Section 91-1-25 relating to the prohibition on inheriting from a person whom one has killed; in Title 91, Chapter 3, Mississippi Code of 1972, the Mississippi Uniform Simultaneous Death Act; and in Section 91-5-25 relating to the spousal right to renounce a will:

(1) If a transferor is a joint owner with right of survivorship who is survived by one or more other joint owners, the real property that is the subject of the transfer-on-death deed belongs to the surviving joint owner or owners. If a transferor is a joint owner with right of survivorship who is the last-surviving joint owner, the transfer-on-death deed is effective.

(2) The last-surviving joint owner may revoke the transfer-on-death deed subject to Section 91-27-19.

(3) A transfer-on-death deed transfers real property without covenant or warranty of title even if the deed contains a contrary provision.

(4) The interest in the property is transferred to a designated beneficiary in accordance with the deed, but the interest of a designated beneficiary is contingent on the designated beneficiary surviving the transferor. The interest of a designated beneficiary that fails to survive the transferor lapses.

(5) Concurrent interests are transferred to the beneficiaries in equal and undivided shares with no right of survivorship, but if the transferor has identified two (2) or more designated beneficiaries to receive concurrent interests in the property, the share of one which lapses or fails for any reason is transferred to the other, or to the others in proportion to the interest of each in the remaining part of the property held concurrently.

HISTORY: Laws, 2020, ch. 406, § 14, eff from and after July 1, 2020.

§ 91-27-29. Transfer-on-death deed property subject to liens and encumbrances at transferor's death; creditors' claims.

Subject to Title 89, Chapter 5, Mississippi Code of 1972, relating to the recordation of instruments, a designated beneficiary takes the real property subject to all conveyances, encumbrances, assignments, contracts, mortgages, liens, and other interests to which the real property is subject at the transferor's death. For purposes of this section and Title 89, Chapter 5, Mississippi Code of 1972, the recording of the transfer-on-death deed is considered to have occurred at the transferor's death.

HISTORY: Laws, 2020, ch. 406, § 15, eff from and after July 1, 2020.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in an internal reference in the last sentence of the section by substituting "this section" for "this subsection." The Joint Committee ratified the corrections at its October 19, 2020, meeting.

§ 91-27-31. Disclaimer.

A designated beneficiary may disclaim all or part of the designated beneficiary's interest as provided by the Mississippi Uniform Disclaimer of Property Interests Act (2002/2010), Title 89, Chapter 22, Mississippi Code of 1972.

HISTORY: Laws, 2020, ch. 406, § 16, eff from and after July 1, 2020.

§ 91-27-33. Optional form for transfer-on-death deed.

The following form may be used to create a transfer-on-death deed. This chapter governs the effect of this or any other instrument used to create a transfer-on-death deed:

REVOCABLE TRANSFER-ON-DEATH DEED

NOTICE TO OWNER

You should carefully read all information on the other side of this form. YOU MAY WANT TO CONSULT A LAWYER BEFORE USING THIS FORM.

This form must be recorded before your death, or it will not be effective.

IDENTIFYING INFORMATION

Owner or Owners Making This Deed:

______________ ______________________
Printed name Mailing address

______________ ______________________
Printed name Mailing address

Legal description of the property: ____

PRIMARY BENEFICIARY

I designate the following beneficiary if the beneficiary survives me.

______________ ______________________
Printed name Mailing address, if available

ALTERNATE BENEFICIARY - Optional

If my primary beneficiary does not survive me, I designate the following alternate beneficiary if that beneficiary survives me.

______________ ______________________
Printed name Mailing address, if available

TRANSFER-ON-DEATH

At my death, I transfer my interest in the described property to the beneficiaries as designated above.

Before my death, I have the right to revoke this deed as set forth in Section 97-27-21, Mississippi Code of 1972.

SIGNATURE OF OWNER OR OWNERS MAKING THIS DEED

____________________________ ______________
Signature Date

____________________________ ______________
Signature Date

ACKNOWLEDGMENT

(insert acknowledgment for deed here)

HISTORY: Laws, 2020, ch. 406, § 17, eff from and after July 1, 2020.

§ 91-27-35. Optional form of revocation.

The following form may be used to create an instrument of revocation of a transfer-on-death deed. This chapter governs the effect of this or any other instrument used to revoke a transfer-on-death deed.

REVOCATION OF TRANSFER-ON-DEATH DEED

NOTICE TO OWNER

This revocation must be recorded before you die or it will not be effective. This revocation is effective only as to the interests in the property of owners who sign this revocation.

IDENTIFYING INFORMATION

Owner or Owners of Property Making This Revocation:

____________ __________________
Printed name Mailing address

____________ __________________
Printed name Mailing address

Legal description of the property: ______________________________

REVOCATION

I revoke all my previous transfers of this property by transfer-on-death deed.

SIGNATURE OF OWNER OR OWNERS MAKING THIS REVOCATION

______________________________ ______________
Signature Date

______________________________ ______________
Signature Date

ACKNOWLEDGMENT

(insert acknowledgment here)

HISTORY: Laws, 2020, ch. 406, § 18, eff from and after July 1, 2020.

§ 91-27-37. Relation to Electronic Signatures in Global and National Commerce Act.

This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

HISTORY: Laws, 2020, ch. 406, § 19, eff from and after July 1, 2020.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in a statutory reference at the end of the section by adding "Section 7003(b)" so that the reference to the Section 103(b) of the Electronic Signatures in Global and National Commerce Act reads: "15. U.S.C. Section 7003(b)." The Joint Committee ratified the corrections at its October 19, 2020, meeting.

CHAPTER 29.

EFFECT OF DISSOLUTION OF MARRIAGE.

Sec.
91-29-1. Will provisions made before dissolution of marriage.
91-29-3. Treatment of decedent's former spouse.
91-29-5. Definitions.
91-29-7. Revocation of certain nontestamentary transfers; treatment of former spouse as beneficiary under certain policies or plans.
91-29-9. Effect of revocation.
91-29-11. Liability of certain purchasers or recipients of certain payments, benefits, or property.
91-29-13. Liability of former spouse for certain payments, benefits or property.
91-29-15. Certain trusts with divorced individuals as joint settlors.
91-29-17. Designation of former spouse or relative of former spouse on certain multiple-party accounts.
91-29-19. Determination of consanguinity.

Sec.
91-29-23. Pre-decree designation of ex-spouse as beneficiary of life insurance.
91-29-25. Pre-decree designation of ex-spouse as beneficiary in retirement benefits and other financial plans.
91-29-29. Determination of affinity.

§ 91-29-1. Will provisions made before dissolution of marriage.

(a) In this section:

(1) "Irrevocable trust" means a trust:

(A) For which the trust instrument was executed before the dissolution of a testator's marriage; and

(B) That the testator was not solely empowered by law or by the trust instrument to revoke.

(2) "Relative" means an individual related to another individual by:

(A) Consanguinity, as determined under Section 91-29-17; or

(B) Affinity, as determined under Section 91-29-19.

(b) If, after the testator makes a will, the testator's marriage is dissolved by divorce, annulment, or a declaration that the marriage is void, unless the will expressly provides otherwise:

(1) All provisions in the will, including all fiduciary appointments, shall be read as if the former spouse and each relative of the former spouse who is not a relative of the testator had failed to survive the testator; and

(2) All provisions in the will disposing of property to an irrevocable trust in which a former spouse or a relative of a former spouse who is not a relative of the testator is a beneficiary or is nominated to serve as trustee or in another fiduciary capacity or that confers a general or special power of appointment on a former spouse or a relative of a former spouse who is not a relative of the testator shall be read to instead dispose of the property to a trust the provisions of which are identical to the irrevocable trust, except any provision in the irrevocable trust:

(A) Conferring a beneficial interest or a general or special power of appointment to the former spouse or a relative of the former spouse who is not a relative of the testator shall be treated as if the former spouse and each relative of the former spouse who is not a relative of the testator had disclaimed the interest granted in the provision; and

(B) Nominating the former spouse or a relative of the former spouse who is not a relative of the testator to serve as trustee or in another fiduciary capacity, or trust protector, trust advisor, investment advisor or similar capacity, shall be treated as if the former spouse and each relative of the former spouse who is not a relative of the testator had died immediately before the dissolution of the marriage.

(c) Subsection (b)(2) does not apply if one (1) of the following provides otherwise:

(1) A court order; or

(2) An express provision of a contract relating to the division of the marital estate entered into between the testator and the testator's former spouse before, during, or after the marriage.

HISTORY: Laws, 2020, ch. 406, § 20, eff from and after July 1, 2020.

§ 91-29-3. Treatment of decedent's former spouse.

A person is not a surviving spouse of a decedent if the person's marriage to the decedent has been dissolved by divorce, annulment, or a declaration that the marriage is void, unless:

(1) As the result of a subsequent marriage, the person is married to the decedent at the time of death; and

(2) The subsequent marriage is not declared void.

HISTORY: Laws, 2020, ch. 406, § 21, eff from and after July 1, 2020.

§ 91-29-5. Definitions.

In this chapter:

(1) "Disposition or appointment of property" includes a transfer of property to or a provision of another benefit to a beneficiary under a trust instrument.

(2) "Divorced individual" means an individual whose marriage has been dissolved by divorce, annulment, or a declaration that the marriage is void.

(3) "Relative" means an individual who is related to another individual by consanguinity or affinity, as determined under Sections 91-29-17 and 91-25-19.

(4) "Revocable," with respect to a disposition, appointment, provision, or nomination, means a disposition to, appointment of, provision in favor of, or nomination of an individual's spouse that is contained in a trust instrument executed by the individual before the dissolution of the individual's marriage to the spouse and that the individual was solely empowered by law or by the trust instrument to revoke regardless of whether the individual had the capacity to exercise the power at that time.

HISTORY: Laws, 2020, ch. 406, § 22, eff from and after July 1, 2020.

§ 91-29-7. Revocation of certain nontestamentary transfers; treatment of former spouse as beneficiary under certain policies or plans.

(a) The dissolution of the marriage revokes a provision in a trust instrument that was executed by a divorced individual as settlor before the divorced individual's marriage was dissolved and that:

(1) Is a revocable disposition or appointment of property made to the divorced individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual;

(2) Revocably confers a general or special power of appointment on the divorced individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual; or

(3) Revocably nominates the divorced individual's former spouse or any

relative of the former spouse who is not a relative of the divorced individual to serve:

(A) As a personal representative, trustee, conservator, agent, or guardian; or

(B) In another fiduciary or representative capacity.

(b) Subsection (a) does not apply if one (1) of the following provides otherwise:

(1) A court order;

(2) The express terms of a trust instrument executed by the divorced individual before the individual's marriage was dissolved; or

(3) An express provision of a contract relating to the division of the marital estate entered into between the divorced individual and the individual's former spouse before, during, or after the marriage.

(c) Sections 91-29-21 and 91-29-23 govern the designation of a former spouse as a beneficiary of certain life insurance policies or as a beneficiary under certain retirement benefit plans or other financial plans.

HISTORY: Laws, 2020, ch. 406, § 23, eff from and after July 1, 2020.

§ 91-29-9. Effect of revocation.

(a) An interest granted in a provision of a trust instrument that is revoked under Section 91-29-7(a)(1) or (2) passes as if the former spouse of the divorced individual who executed the trust instrument and each relative of the former spouse who is not a relative of the divorced individual disclaimed the interest granted in the provision.

(b) An interest granted in a provision of a trust instrument that is revoked under Section 91-29-7(a)(3) passes as if the former spouse and each relative of the former spouse who is not a relative of the divorced individual died immediately before the dissolution of the marriage.

HISTORY: Laws, 2020, ch. 406, § 24, eff from and after July 1, 2020.

§ 91-29-11. Liability of certain purchasers or recipients of certain payments, benefits, or property.

A bona fide purchaser of property from a divorced individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual or a person who receives from the former spouse or any relative of the former spouse who is not a relative of the divorced individual a payment, benefit, or property in partial or full satisfaction of an enforceable obligation:

(1) Is not required by this chapter to return the payment, benefit, or property; and

(2) Is not liable under this chapter for the amount of the payment or the value of the property or benefit.

HISTORY: Laws, 2020, ch. 406, § 25, eff from and after July 1, 2020.

§ 91-29-13. Liability of former spouse for certain payments, benefits or property.

A divorced individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual who, not for value, receives a payment, benefit, or property to which the former spouse or the relative of the former spouse who is not a relative of the divorced individual is not entitled as a result of Sections 91-29-7 (a) and (b):

(1) Shall return the payment, benefit, or property to the person who is entitled to the payment, benefit, or property under this chapter; or

(2) Is personally liable to the person described by paragraph (1) for the amount of the payment or the value of the benefit or property received, as applicable.

HISTORY: Laws, 2020, ch. 406, § 26, eff from and after July 1, 2020.

§ 91-29-15. Certain trusts with divorced individuals as joint settlors.

(a) This section applies only to a trust created under a trust instrument that:

(1) Was executed by two (2) married individuals as settlors whose marriage to each other is subsequently dissolved; and

(2) Includes a provision described by Section 91-29-7(a).

(b) On the death of one (1) of the divorced individuals who is a settlor of a trust to which this section applies, the trustee shall divide the trust into two (2) trusts, each of which shall be composed of the property attributable to the contributions of only one (1) of the divorced individuals.

(c) An action authorized in a trust instrument described by subsection (a) that requires the actions of both divorced individuals may be taken with respect to a trust established in accordance with subsection (b) from the surviving divorced individual's contributions solely by that divorced individual.

(d) The provisions of this chapter apply independently to each trust established in accordance with subsection (b) as if the divorced individual from whose contributions the trust was established had been the only settlor to execute the trust instrument described by subsection (a).

(e) This section does not apply if one (1) of the following provides otherwise:

(1) A court order;

(2) The express terms of a trust instrument executed by the two (2) divorced individuals before their marriage was dissolved; or

(3) An express provision of a contract relating to the division of the marital estate entered into between the two (2) divorced individuals before, during, or after their marriage.

HISTORY: Laws, 2020, ch. 406, § 27, eff from and after July 1, 2020.

§ 91-29-17. Designation of former spouse or relative of former spouse on certain multiple-party accounts.

(a) In this section:

(1) "Beneficiary," "multiple-party account, "party," "P.O.D. account," "P.O.D. payee," "T.O.D. account," and T.O.D. payee" have the meanings assigned in Title 91, Chapter 21, Mississippi Code of 1972.

(2) "Public retirement system" has the meaning assigned by Section 25-11-101.

(b) If a decedent established a P.O.D. account, T.O.D. account, or other multiple-party account and the decedent's marriage was later dissolved by divorce, annulment, or a declaration that the marriage is void, any payable on request after death designation provision with respect to that account in favor of the decedent's former spouse or a relative of the former spouse who is not a relative of the decedent is not effective as to that spouse or relative unless:

(1) The court decree dissolving the marriage designates the former spouse or the former spouse's relative as the P.O.D. payee, T.O.D. payee, or beneficiary; or

(2) After the marriage was dissolved, the decedent redesignated the former spouse or the former spouse's relative as the P.O.D. payee, T.O.D. payee, or beneficiary; or

(3) The former spouse or the former spouse's relative is designated to receive the proceeds or benefits in trust for, on behalf of, or for the benefit of a child or dependent of either the decedent or the former spouse.

(c) If a designation is not effective under subsection (b), a multiple-party account is payable to the named alternative P.O.D. payee, T.O.D. payee, or beneficiary or, if an alternative P.O.D. payee, T.O.D. payee, or beneficiary is not named, to the estate of the decedent.

(d) A financial institution or other person obligated to pay an account described by subsection (b) that pays the account to the former spouse or the former spouse's relative as P.O.D. payee, T.O.D. payee, or beneficiary under a designation that is not effective under subsection (b) is liable for payment of the account to the person provided by subsection (c) only if:

(1) Before payment of the account to the designated P.O.D. payee, T.O.D. payee, or beneficiary, the payor receives written notice at the home office or principal office of the payor from an interested person that the designation of the P.O.D. payee, T.O.D. payee, or beneficiary is not effective under subsection (b); and

(2) The payor has not interpleaded the account funds into the registry of a court of competent jurisdiction in accordance with the Mississippi Rules of Civil Procedure.

(e) This section does not affect the right of a former spouse to assert an ownership interest in an undivided multiple-party account described by subsection (b).

(f) This section does not apply to the disposition of a beneficial interest in a retirement benefit or other financial plan of a public retirement system.

HISTORY: Laws, 2020, ch. 406, § 28, eff from and after July 1, 2020.

§ 91-29-19. Determination of consanguinity.

(a) Two (2) individuals are related to each other by consanguinity if:

(1) One (1) is a descendant of the other; or

(2) They share a common ancestor.

(b) An adopted child is considered to be a child of the adoptive parent for this purpose.

HISTORY: Laws, 2020, ch. 406, § 29, eff from and after July 1, 2020.

§ 91-29-23. Pre-decree designation of ex-spouse as beneficiary of life insurance.

(a) If a decree of divorce or annulment is rendered after an insured has designated the insured's spouse as a beneficiary under a life insurance policy in force at the time of rendition, a provision in the policy in favor of the insured's former spouse is not effective unless:

(1) The decree designates the insured's former spouse as the beneficiary;

(2) The insured redesignates the former spouse as the beneficiary after rendition of the decree; or

(3) The former spouse is designated to receive the proceeds in trust for, on behalf of, or for the benefit of a child or a dependent of either former spouse.

(b) If a designation is not effective under subsection (a), the proceeds of the policy are payable to the named alternative beneficiary or, if there is not a named alternative beneficiary, to the estate of the insured.

(c) An insurer who pays the proceeds of a life insurance policy issued by the insurer to the beneficiary under a designation that is not effective under subsection (a) is liable for payment of the proceeds to the person or estate provided by subsection (b) only if:

(1) Before payment of the proceeds to the designated beneficiary, the insurer receives written notice at the home office of the insurer from an interested person that the designation is not effective under subsection (a); and

(2) The insurer has not interpleaded the proceeds into the registry of a court of competent jurisdiction in accordance with the Mississippi Rules of Civil Procedure.

HISTORY: Laws, 2020, ch. 406, § 31, eff from and after July 1, 2020.

§ 91-29-25. Pre-decree designation of ex-spouse as beneficiary in retirement benefits and other financial plans.

(a) If a decree of divorce or annulment is rendered after a spouse, acting in the capacity of a participant, annuitant, or account holder, has designated the other spouse as a beneficiary under an individual retirement account, employee stock option plan, stock option, or other form of savings, bonus, profit-sharing, or other employer plan or financial plan of an employee or a participant in force at the time of rendition, the designating provision in the plan in favor of the other former spouse is not effective unless:

(1) The decree designates the other former spouse as the beneficiary;

(2) The designating former spouse redesignates the other former spouse as the beneficiary after rendition of the decree; or

(3) The other former spouse is designated to receive the proceeds or benefits in trust for, on behalf of, or for the benefit of a child or dependent of either former spouse.

(b) If a designation is not effective under subsection (a), the benefits or proceeds are payable to the named alternative beneficiary or, if there is not a named alternative beneficiary, to the designating former spouse.

(c) A business entity, employer, pension trust, insurer, financial institution, or other person obligated to pay retirement benefits or proceeds of a financial plan covered by this section who pays the benefits or proceeds to the beneficiary under a designation of the other former spouse that is not effective under subsection (a) is liable for payment of the benefits or proceeds to the person provided by subsection (b) only if:

(1) Before payment of the benefits or proceeds to the designated beneficiary, the payor receives written notice at the home office or principal office of the payor from an interested person that the designation of the beneficiary or fiduciary is not effective under subsection (a); and

(2) The payor has not interpleaded the benefits or proceeds into the registry of a court of competent jurisdiction in accordance with the Mississippi Rules of Civil Procedure.

(d) This section does not affect the right of a former spouse to assert an ownership interest in an undivided pension, retirement, annuity, or other financial plan described by this section as provided by this chapter.

(e) This section does not apply to the disposition of a beneficial interest in a retirement benefit or other financial plan of a public retirement system as defined by Section 25-11-101 et seq.

HISTORY: Laws, 2020, ch. 406, § 32, eff from and after July 1, 2020.

§ 91-29-29. Determination of affinity.

(a) Two (2) individuals are related to each other by affinity if:

(1) They are married to each other; or

(2) The spouse of one (1) of the individuals is related by consanguinity to the other individual.

(b) The ending of a marriage by divorce or the death of a spouse ends relationships by affinity created by that marriage.

HISTORY: Laws, 2020, ch. 406, § 30, eff from and after July 1, 2020.

CHAPTER 31.

UNIFORM PARTITION OF HEIR PROPERTY.

Sec.	
91-31-1.	Short title.
91-31-3.	Definitions.
91-31-5.	Applicability; relation to other law.
91-31-7.	Service; notice by posting.
91-31-9.	Masters.
91-31-11.	Determination of value.
91-31-13.	Cotenant buyout.
91-31-15.	Partition alternatives.
91-31-17.	Considerations for partition in kind.
91-31-19.	Open-market sale, sealed bids or auction.
91-31-21.	Report of open-market sale.
91-31-23.	Uniformity of application and construction.
91-31-25.	Relation to electronic signatures in global and national commerce act.

§ 91-31-1. Short title.

This chapter may be cited as the Uniform Partition of Heir Property Act.

HISTORY: Laws, 2020, ch. 433, § 1, eff from and after July 1, 2020.

§ 91-31-3. Definitions.

In this chapter:

(1) "Ascendant" means an individual who precedes another individual in lineage, in the direct line of ascent from the other individual.

(2) "Collateral" means an individual who is related to another individual under the law of intestate succession of this state but who is not the other individual's ascendant or descendant.

(3) "Descendant" means an individual who follows another individual in lineage, in the direct line of descent from the other individual.

(4) "Determination of value" means a court order determining the fair market value of heir property under Section 91-31-11 or 91-31-19 or adopting the valuation of the property agreed to by all cotenants.

(5) "Heir property" means real property held in tenancy in common which satisfies all of the following requirements as of the filing of a partition action:

(A) There is no agreement in a record binding all the cotenants which governs the partition of the property;

(B) One or more of the cotenants acquired title from a relative, whether living or deceased; and

(C) Any of the following applies:

(i) Twenty percent (20%) or more of the interests are held by cotenants who are relatives;

(ii) Twenty percent (20%) or more of the interests are held by an individual who acquired title from a relative, whether living or deceased; or

(iii) Twenty percent (20%) or more of the cotenants are relatives.

(6) "Partition by sale" means a court-ordered sale of the entire heir property, whether by auction, sealed bids, or open-market sale conducted under Section 91-31-19.

(7) "Partition in kind" means the division of heir property into physically distinct and separately titled parcels.

(8) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(9) "Relative" means an ascendant, descendant, or collateral or an individual otherwise related to another individual by blood, marriage, adoption, or law of this state other than this chapter.

HISTORY: Laws, 2020, ch. 433, § 2, eff from and after July 1, 2020.

§ 91-31-5. Applicability; relation to other law.

Applicability; relation to other law.

(a) This chapter applies to partition actions filed on or after July 1, 2020.

(b) In an action to partition real property under Title 11, Chapter 21, Mississippi Code of 1972, the court shall determine whether the property is heir property. If the court determines that the property is heir property, the property must be partitioned under this chapter unless all of the cotenants otherwise agree in a record.

(c) This chapter supplements Title 11, Chapter 21, Mississippi Code of 1972, and, if an action is governed by this chapter, replaces provisions that are inconsistent with this chapter.

HISTORY: Laws, 2020, ch. 433, § 3, eff from and after July 1, 2020.

§ 91-31-7. Service; notice by posting.

(a) This chapter does not limit or affect the method by which service of a complaint in a partition action may be made.

(b) If the plaintiff in a partition action seeks an order of notice by publication and the court determines that the property may be heir property, the plaintiff, not later than ten (10) days after the court's determination, shall post and maintain while the action is pending a conspicuous sign on the property that is the subject of the action. The sign must state that the action has commenced and identify the name and address of the court and the common designation by which the property is known. The court may require the plaintiff to publish on the sign the name of the plaintiff and the known defendants.

HISTORY: Laws, 2020, ch. 433, § 4, eff from and after July 1, 2020.

§ 91-31-9. Masters.

If the court appoints masters under Section 11-21-15, each master, in addition to the requirements and disqualifications applicable to masters in Title 11, Chapter 21, Mississippi Code of 1972, must be disinterested and impartial and not a party to or a participant in the action.

HISTORY: Laws, 2020, ch. 433, § 5, eff from and after July 1, 2020.

§ 91-31-11. Determination of value.

(a) Except as otherwise provided in subsections (b) and (c), if the court determines that the property that is the subject of a partition action is heir property, the court shall determine the fair market value of the property by ordering an appraisal pursuant to subsection (d).

(b) If all cotenants have agreed to the value of the property or to another method of valuation, the court shall adopt that value or the value produced by the agreed method of valuation.

(c) If the court determines that the evidentiary value of an appraisal is outweighed by the cost of the appraisal, the court, after an evidentiary hearing, shall determine the fair market value of the property and send notice to the parties of the value.

(d) If the court orders an appraisal, the court shall appoint a disinterested real estate appraiser licensed in this state to determine the fair market value of the property assuming sole ownership of the fee simple estate. On completion of the appraisal, the appraiser shall file a sworn or verified appraisal with the court.

(e) If an appraisal is conducted pursuant to subsection (d), not later than ten (10) days after the appraisal is filed, the court shall send notice to each party with a known address, stating:

(1) The appraised fair market value of the property;

(2) That the appraisal is available at the clerk's office; and

(3) That a party may file with the court an objection to the appraisal not later than thirty (30) days after the notice is sent, stating the grounds for the objection.

(f) If an appraisal is filed with the court pursuant to subsection (d), the court shall conduct a hearing to determine the fair market value of the property not sooner than thirty (30) days after a copy of the notice of the appraisal is sent to each party under subsection (e), whether or not an objection to the appraisal is filed under subsection (e)(3). In addition to the court-ordered appraisal, the court may consider any other evidence of value offered by a party.

(g) After a hearing under subsection (f), but before considering the merits of the partition action, the court shall determine the fair market value of the property and send notice to the parties of the value.

HISTORY: Laws, 2020, ch. 433, § 6, eff from and after July 1, 2020.

§ 91-31-13. Cotenant buyout.

(a) If any cotenant requested partition by sale, after the determination of value under Section 91-31-11, the court shall send notice to the parties that any cotenant except a cotenant that requested partition by sale may buy all the interests of the cotenants that requested partition by sale.

(b) Not later than forty-five (45) days after the notice is sent under subsection (a), any cotenant except a cotenant that requested partition by sale may give notice to the court that it elects to buy all the interests of the cotenants that requested partition by sale.

(c) The purchase price for each of the interests of a cotenant that requested partition by sale is the value of the entire parcel determined under Section 91-31-11 multiplied by the cotenant's fractional ownership of the entire parcel.

(d) After expiration of the period in subsection (b), the following rules apply:

(1) If only one (1) cotenant elects to buy all the interests of the cotenants that requested partition by sale, the court shall notify all the parties of that fact.

(2) If more than one cotenant elects to buy all the interests of the cotenants that requested partition by sale, the court shall allocate the right to buy those interests among the electing cotenants based on each electing cotenant's existing fractional ownership of the entire parcel divided by the total existing fractional ownership of all cotenants electing to buy and send notice to all the parties of that fact and of the price to be paid by each electing cotenant.

(3) If no cotenant elects to buy all the interests of the cotenants that requested partition by sale, the court shall send notice to all the parties of that fact and resolve the partition action under Section 91-31-15(a) and (b).

(e) If the court sends notice to the parties under subsection (d)(1) or (2), the court shall set a date, not sooner than sixty (60) days after the date the notice was sent, by which electing cotenants must pay their apportioned price into the court. After this date, the following rules apply:

(1) If all electing cotenants timely pay their apportioned price into court, the court shall issue an order reallocating all the interests of the cotenants and disburse the amounts held by the court to the persons entitled to them.

(2) If no electing cotenant timely pays its apportioned price, the court shall resolve the partition action under Section 91-31-15(a) and (b) as if the interests of the cotenants that requested partition by sale were not purchased.

(3) If one or more but not all of the electing cotenants fail to pay their apportioned price on time, the court, on motion, shall give notice to the electing cotenants that paid their apportioned price of the interest remaining and the price for all that interest.

(f) Not later than twenty (20) days after the court gives notice pursuant to subsection (e)(3), any cotenant that paid may elect to purchase all of the remaining interest by paying the entire price into the court. After the twenty-day period, the following rules apply:

(1) If only one (1) cotenant pays the entire price for the remaining interest, the court shall issue an order reallocating the remaining interest to that cotenant. The court shall issue promptly an order reallocating the interests of all of the cotenants and disburse the amounts held by it to the persons entitled to them.

(2) If no cotenant pays the entire price for the remaining interest, the court shall resolve the partition action under Section 91-31-15(a) and (b) as if the interests of the cotenants that requested partition by sale were not purchased.

(3) If more than one (1) cotenant pays the entire price for the remaining interest, the court shall reapportion the remaining interest among those paying cotenants, based on each paying cotenant's original fractional ownership of the entire parcel divided by the total original fractional ownership of all cotenants that paid the entire price for the remaining interest. The court shall issue promptly an order reallocating all of the cotenants' interests, disburse the amounts held by it to the persons entitled to them, and promptly refund any excess payment held by the court.

(g) Not later than forty-five (45) days after the court sends notice to the parties pursuant to subsection (a), any cotenant entitled to buy an interest under this section may request the court to authorize the sale as part of the pending action of the interests of cotenants named as defendants and served with the complaint but that did not appear in the action.

(h) If the court receives a timely request under subsection (g), the court, after hearing, may deny the request or authorize the requested additional sale on such terms as the court determines are fair and reasonable, subject to the following limitations:

(1) A sale authorized under this subsection may occur only after the purchase prices for all interests subject to sale under subsections (a) through (f) have been paid into court and those interests have been reallocated among the cotenants as provided in those subsections; and

(2) The purchase price for the interest of a nonappearing cotenant is based on the court's determination of value under Section 91-31-11.

HISTORY: Laws, 2020, ch. 433, § 7, eff from and after July 1, 2020.

§ 91-31-15. Partition alternatives.

(a) If all the interests of all cotenants that requested partition by sale are not purchased by other cotenants pursuant to Section 91-31-13, or if after conclusion of the buyout under Section 91-31-13, a cotenant remains that has requested partition in kind, the court shall order partition in kind unless the court, after consideration of the factors listed in Section 91-31-17, finds that partition in kind will result in manifest prejudice to the cotenants as a group. In considering whether to order partition in kind, the court shall approve a request by two (2) or more parties to have their individual interests aggregated.

(b) If the court does not order partition in kind under subsection (a), the court shall order partition by sale pursuant to Section 91-31-19 or, if no cotenant requested partition by sale, the court shall dismiss the action.

(c) If the court orders partition in kind pursuant to subsection (a), the court may require that one or more cotenants pay one or more other cotenants amounts so that the payments, taken together with the value of the in-kind distributions to the cotenants, will make the partition in kind just and proportionate in value to the fractional interests held.

(d) If the court orders partition in kind, the court shall allocate to the cotenants that are unknown, unlocatable, or the subject of a default judgment, if their interests were not bought out pursuant to Section 91-31-13, a part of the property representing the combined interests of these cotenants as determined by the court and this part of the property shall remain undivided.

HISTORY: Laws, 2020, ch. 433, § 8, eff from and after July 1, 2020.

§ 91-31-17. Considerations for partition in kind.

(a) In determining under Section 91-31-15(a) whether partition in kind would result in manifest prejudice to the cotenants as a group, the court shall consider the following:

(1) Whether the heir property practicably can be divided among the cotenants;

(2) Whether partition in kind would apportion the property in such a way that the aggregate fair market value of the parcels resulting from the division would be materially less than the value of the property if it were sold as a whole, taking into account the condition under which a court-ordered sale likely would occur;

(3) Evidence of the collective duration of ownership or possession of the property by a cotenant and one or more predecessors in title or predecessors in possession to the cotenant who are or were relatives of the cotenant or each other;

(4) A cotenant's sentimental attachment to the property, including any attachment arising because the property has ancestral or other unique or special value to the cotenant;

(5) The lawful use being made of the property by a cotenant and the degree to which the cotenant would be harmed if the cotenant could not continue the same use of the property;

(6) The degree to which the cotenants have contributed their pro rata share of the property taxes, insurance, and other expenses associated with maintaining ownership of the property or have contributed to the physical improvement, maintenance, or upkeep of the property; and

(7) Any other relevant factor.

(b) The court may not consider any one (1) factor in subsection (a) to be dispositive without weighing the totality of all relevant factors and circumstances.

HISTORY: Laws, 2020, ch. 433, § 9, eff from and after July 1, 2020.

§ 91-31-19. Open-market sale, sealed bids or auction.

(a) If the court orders a sale of heir property, the sale must be an open-market sale unless the court finds that a sale by sealed bids or an auction would be more economically advantageous and in the best interest of the cotenants as a group.

(b) If the court orders an open-market sale and the parties, not later than ten (10) days after the entry of the order, agree on a real estate broker licensed in this state to offer the property for sale, the court shall appoint the broker and establish a reasonable commission. If the parties do not agree on a broker, the court shall appoint a disinterested real estate broker licensed in this state to offer the property for sale and shall establish a reasonable commission. The broker shall offer the property for sale in a commercially reasonable manner at a price no lower than the determination of value and on the terms and conditions established by the court.

(c) If the broker appointed under subsection (b) obtains within a reasonable time an offer to purchase the property for at least the determination of value:

(1) The broker shall comply with the reporting requirements in Section 91-31-21; and

(2) The sale may be completed in accordance with state law other than this chapter.

(d) If the broker appointed under subsection (b) does not obtain within a reasonable time an offer to purchase the property for at least the determination of value, the court, after hearing, may:

(1) Approve the highest outstanding offer, if any;

(2) Redetermine the value of the property and order that the property continue to be offered for an additional time; or

(3) Order that the property be sold by sealed bids or at an auction.

(e) If the court orders a sale by sealed bids or an auction, the court shall set terms and conditions of the sale. If the court orders an auction, the auction must be conducted under Section 11-21-27.

(f) If a purchaser is entitled to a share of the proceeds of the sale, the purchaser is entitled to a credit against the price in an amount equal to the purchaser's share of the proceeds.

HISTORY: Laws, 2020, ch. 433, § 10, eff from and after July 1, 2020.

§ 91-31-21. Report of open-market sale.

(a) Unless required to do so within a shorter time by Title 11, Chapter 21, Mississippi Code of 1972, a broker appointed under Section 91-31-19(b) to offer heir property for open-market sale shall file a report with the court not later than seven (7) days after receiving an offer to purchase the property for at least the value determined under Section 91-31-11 or 91-31-19.

(b) The report required by subsection (a) must contain the following information:

(1) A description of the property to be sold to each buyer;

(2) The name of each buyer;

(3) The proposed purchase price;

(4) The terms and conditions of the proposed sale, including the terms of any owner financing;

(5) The amounts to be paid to lienholders;

(6) A statement of contractual or other arrangements or conditions of the broker's commission; and

(7) Other material facts relevant to the sale.

HISTORY: Laws, 2020, ch. 433, § 11, eff from and after July 1, 2020.

§ 91-31-23. Uniformity of application and construction.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

HISTORY: Laws, 2020, ch. 433, § 12, eff from and after July 1, 2020.

§ 91-31-25. Relation to electronic signatures in global and national commerce act.

This chapter modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 USC Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 USC Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 USC Section 7003(b).

HISTORY: Laws, 2020, ch. 433, § 13, eff from and after July 1, 2020.

TITLE 93.

DOMESTIC RELATIONS

Chapter 9.	Parentage.	93-9-1
Chapter 13.	Parental Guardianship.	93-13-1
Chapter 14.	Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.	93-14-101
Chapter 15.	Mississippi Termination of Parental Rights Law.	93-15-1
Chapter 16.	Grandparents' Visitation Rights.	93-16-1
Chapter 17.	Adoption, Change of Name, and Legitimation of Children.	93-17-1
Chapter 20.	Guardianship and Conservatorship.	93-20-101
Chapter 21.	Protection from Domestic Abuse.	93-21-1
Chapter 22.	Uniform Interstate Enforcement of Domestic Violence Protection Orders.	93-22-1
Chapter 31.	Supporting and Strengthening Families Act.	93-31-1

CHAPTER 1.

MARRIAGE

§ 93-1-5. Conditions precedent to issuance of license; penalty for noncompliance.

OPINIONS OF THE ATTORNEY GENERAL

Female applicant under age of twenty-one is required to file application for marriage license in county of her residence which is defined by State Supreme Court as being county of residence of her parents or guardian. Dunn, March 7, 1990, A.G. Op. #90-0163.

A circuit clerk may issue a marriage license to a couple who have met the statutory conditions precedent. Westbrook, January 16, 1998, A.G. Op. #98-0002.

A medical certificate expires in 30 days for purposes of filing an application for a marriage license. Dunn, October 16, 1998, A.G. Op. #98-0638.

If two applicants for a marriage license present the application and proper medical certificate dated within 30 days prior to the application and return after the 30 day period has expired to obtain the license, the circuit clerk may issue the license, and the applicants will not be required to obtain a new medical certificate and present a new application. Dunn, October 16, 1998, A.G. Op. #98-0638

The fact that proffered documents are issued by a foreign government has no effect on the ability of an applicant to secure a marriage license. Ivey, Apr. 12, 2002, A.G. Op. #02-0167.

A circuit clerk must make the factual determination that a document does substantiate an applicant's age and date of birth before a marriage license may be lawfully issued, and it is left to the discretion of the circuit clerk as to what steps are appropriate in making such determinations. Ivey, Apr. 12, 2002, A.G. Op. #02-0167.

CHAPTER 5.

DIVORCE AND ALIMONY

§ 93-5-1. Causes for divorce.

JUDICIAL DECISIONS

ANALYSIS

9. Addiction, substance abuse.
10. Cruel and inhuman treatment.
15. —Particular circumstances as constituting.
17. —Evidence.

9. Addiction, substance abuse.

Although the chancellor made no specific findings of fact, there was sufficient evidence in a divorce trial in the testimony from the wife and the husband's parents to prove habitual drunkenness on the part of the husband. Furthermore, the evidence showed that the husband's alcohol consumption was frequent, negatively impacted the marriage, and continued until the time of trial. Speights v. Speights, 270 So. 3d 968, 2018 Miss. App. LEXIS 458 (Miss. Ct. App. 2018).

10. Cruel and inhuman treatment.

15. —Particular circumstances as constituting.

In a divorce case, the ex-husband's behavior constituted habitual cruel and inhuman treatment because he would not allow the ex-wife and her daughters to do basic things; he prevented the wife from cleaning their home, he accumulated piles of trash and dishes throughout the house but forbade the wife from throwing anything away or washing the dishes, and he hoarded junk outside the home; he spread rumors throughout their community and their church that the wife had been unfaithful with multiple men, including a male cousin; and the wife's sister testified that the husband's treatment caused the wife to transform from a social person who loved life into a person that was scared and shutdown, and who suffered frequent crying outbursts. Dickinson v. Dickinson, 293 So. 3d 322, 2020 Miss. App. LEXIS 96 (Miss. Ct. App. 2020).

Substantial evidence supported the chancellor's finding that the husband's behavior constituted cruel and inhuman treatment, as it included testimony concerning the husband's controlling and volatile behavior and the physical and mental toll it took on the wife, including testimony that the husband became physically abusive toward the wife in the months leading up to their separation. Gilmer v. Gilmer, 297 So. 3d 324, 2020 Miss. App. LEXIS 338 (Miss. Ct. App. 2020).

17. —Evidence.

Wife's testimony was insufficient to grant a divorce on the ground of habitual cruel and inhuman treatment because she testified at a hearing that the husband was a good husband, and she testified at a later hearing that he was condescending, mean-spirited, and sometimes threw her home-cooked dinners in the garbage can. Lindsay v. Lindsay, — So. 3d —, 2020 Miss. App. LEXIS 108 (Miss. Ct. App. Apr. 7, 2020).

Chancery court did not err in granting the wife a divorce on the ground of habitual cruel and inhuman treatment based on the wife's credible testimony that the husband threatened to shoot her and often expressed a desire for her to die, the husband made multiple attempts to sexually assault the wife, and the husband sold $30,000 in jewelry the wife had inherited from her grandmother. Williams v. Williams, — So. 3d —, 2020 Miss. App. LEXIS 80 (Miss. Ct. App. Mar. 17, 2020), cert. denied, — So. 3d —, 2020 Miss. LEXIS 380 (Miss. 2020).

In a divorce case, there was sufficient evidence of habitual cruel and inhuman treatment of the wife as she presented evidence that the husband's behavior negatively affected her overall demeanor and caused her physical harm, including migraines and elevated blood pressure, because he called her derogatory names and criticized the way she took care of the home; the wife testified about constant abuse and constant yelling and screaming and berating; and he picked the lock and barged in on her in the bathroom after she had retreated there for safety. Although those might have been isolated incidents, they were sufficient to establish a continuing pattern of behavior constituting more than mere unkindness, rudeness, or incompatibility. Rankin v. Rankin, — So. 3d —, 2020 Miss. App. LEXIS 570 (Miss. Ct. App. Oct. 6, 2020).

§ 93-5-2. Divorce on ground of irreconcilable differences.

JUDICIAL DECISIONS

ANALYSIS

1.5. Constitutionality.
6. Child custody, support.
10. Revocation of consent.
12. Illustrative cases.

1.5. Constitutionality.

Chancellor erred in declaring Miss. Code Ann. § 93-5-2 unconstitutional sua sponte because the litigants did not raise the issue in pleadings or proof, so the ruling exceeded the chancellor's authority. Gerty v. Gerty, 265 So. 3d 121, 2018 Miss. LEXIS 512 (Miss. 2018).

6. Child custody, support.

While the chancery court failed to apply the Ferguson factors in awarding lump-sum alimony to a wife, it did not deviate from the parties' written agreement by requiring the husband to pay a lump sum for their daughter's educational costs because the parties stipulated to the lump-sum amount, the chancellor was acting within her authority to resolve the dispute and the parties fully complied with the requirements Johnson v. Johnson, 2020 Miss. App. LEXIS 351 (June 2, 2020).

10. Revocation of consent.

In an irreconcilable-differences divorce, the chancellor abused her discretion in dismissing all pleadings filed subsequent to the signing of the final divorce decree on May 15, 2012, including the ex-husband's withdrawal of consent to the joint claim for divorce filed on August 23, 2013, because the final divorce decree signed by the chancellor was not final until it was entered by the chancery clerk on June 3, 2014; and the consent restriction in this statute did not apply, and the husband was not required to obtain leave of court to withdraw his consent to the joint complaint for divorce as the parties did not invoke this statute, and there were no issues upon which the parties did not agree. Arrington v. Arrington, 269 So. 3d 1265, 2018 Miss. App. LEXIS 441 (Miss. Ct. App. 2018).

12. Illustrative cases.

Because no court order was entered concerning the change in custody in which the parties agreed that the minor daughter would reside with the father for several months, and the chancery court did not order the mother to pay the father support for those months, the chancery court had no basis to find the mother in contempt, and it did not abuse its discretion when it failed to order the mother to pay child support retroactively. Krohn v. Krohn, 294 So. 3d 680, 2020 Miss. App. LEXIS 131 (Miss. Ct. App. 2020).

Father waived any outstanding request for injunctive relief because the parties consented to an irreconcilable differences divorce and to the specific issues that the chancery court would decide, and the father's request for injunctive relief was not listed in their consent. Sanders v. Sanders, 281 So. 3d 1043, 2019 Miss. App. LEXIS 208 (Miss. Ct. App. 2019).

Husband was entitled to a divorce on grounds of adultery because a wife's condonation defense failed, as ample evidence showed the wife did not disclose the extent and time frame of the wife's extramarital affair, reviving the wife's prior adulterous offenses. Gerty v. Gerty, 265 So. 3d 121, 2018 Miss. LEXIS 512 (Miss. 2018).

Because the parties agreed that the chancellor would decide issues related to child custody and support, equitable division, alimony, and insurance, but contempt was not mentioned when they consented to an irreconcilable differences divorce, the contempt issue was waived. Leblanc v. Leblanc, 271 So. 3d 494, 2018 Miss. App. LEXIS 524 (Miss. Ct. App. 2018).

§ 93-5-23. Custody of children; alimony; effect of military duty on custody and visitation.

JUDICIAL DECISIONS

ANALYSIS

II. CUSTODY.

21. Practice and procedure.

VII. OTHER MATTERS.

64. Attorney fees; generally.
69. Guardian ad litem fees.

II. CUSTODY.

21. Practice and procedure.

Trial court did not abuse its discretion by limiting a guardian ad litem's participation, but, because the appointment was mandatory after the wife's allegations of child abuse by the husband, the chancellor was required at least to consider the guardian ad litem's report and recommendations. Accordingly, reversal of the judgment and remand of the case was necessary for the chancellor to make findings of fact and conclusions of law taking into consideration the guardian ad litem's report and recommendations. Barber v. Barber, 288 So. 3d 325, 2020 Miss. LEXIS 16 (Miss. 2020).

Chancery court did not abuse its discretion by not appointing a guardian ad litem (GAL) sua sponte in a contempt proceeding because a mother never asked the chancery court to appoint a GAL; the appointment of a GAL was not mandatory because the mother failed to cite to any concrete allegation of abuse. Brown v. Hewlett, 281 So. 3d 189, 2019 Miss. App. LEXIS 94 (Miss. Ct. App. 2019).

Appointment of the guardian ad litem (GAL) was discretionary, and the GAL was properly allowed to withdraw without submitting a final custody recommendation because allegations of abuse mandating the appointment of a GAL were not present in the custody case; and the scope of the GAL's appointment did not include making a final recommendation regarding custody of the minor children. Kaiser v. Kaiser, 281 So. 3d 1136, 2019 Miss. App. LEXIS 262 (Miss. Ct. App. 2019).

VII. OTHER MATTERS.

64. Attorney fees; generally.

No evidence of sexual abuse by the third party was presented at trial, but evidence was presented that the mother coached the child regarding the sexual abuse allegations, and all allegations of sexual abuse were found to be unsubstantiated; thus, the record supported the chancellor's award of attorney fees. Garner v. Garner, 283 So. 3d 120, 2019 Miss. LEXIS 357 (Miss. 2019).

69. Guardian ad litem fees.

Chancellor assessed all guardian ad litem (GAL) costs against the mother, but remand was necessary; while the third party was entitled to those GAL costs incurred as a result of the unsubstantiated abuse allegations, the record was unclear what portion of the total amount of costs awarded was actually incurred by the GAL in investigating those allegations. Garner v. Garner, 283 So. 3d 120, 2019 Miss. LEXIS 357 (Miss. 2019).

§ 93-5-24. Types of custody awarded by court; joint custody; no presumption in favor of maternal custody; access to information pertaining to child by noncustodial parent; restrictions on custody by parent with history of perpetrating family violence; rebuttable presumption that such custody is not in the best interest of the child; factors in reaching determinations; visitation orders.

JUDICIAL DECISIONS

ANALYSIS

1. Factors affecting custody — In general.
8. —Miscellaneous.
12. Modification denied.
13. Modification proper.
16. Family-violence presumption.

1. Factors affecting custody — In general.

8. —Miscellaneous.

Chancellor did not err in awarding primary physical custody of the two minor children to the ex-wife as the ex-husband showed a lack of consideration for the children's best interests because the wife's former boyfriend was no longer in the picture; the husband denied the wife access to the children for nearly three months, with no court order; and the husband failed to take the younger child to the doctor for four days despite a high fever. Kaiser v. Kaiser, 281 So. 3d 1136, 2019 Miss. App. LEXIS 262 (Miss. Ct. App. 2019).

Chancellor apparently assigned slightly greater weight to a child's sex than to the child's age. Furthermore, the chancellor did not abuse its discretion by finding that this factor, as a whole, slightly favored the father. Barbaro v. Smith, 282 So. 3d 578, 2019 Miss. App. LEXIS 322 (Miss. Ct. App. 2019).

12. Modification denied.

Trial court did not err in denying a mother's petition for modification of child custody because the trial court determined from the witnesses and evidence presented that there had been no material change in circumstances that adversely affected the parties' child. Furthermore, the appellate found no manifest error or abuse of the trial court's discretion in doing so. Warner v. Thomas, 281 So. 3d 216, 2019 Miss. App. LEXIS 108 (Miss. Ct. App. 2019).

13. Modification proper.

Based on the witnesses and evidence of the mother's expected move, the father received custody of the child during the upcoming school year while the mother received custody the majority of the summer holiday, the entirety of spring break and Thanksgiving, and part of Christmas. That modification provided both parties with significant periods of physical custody to assure the child of frequent and continuing contact with both parents. Champlin v. Domke, — So. 3d —, 2020 Miss. App. LEXIS 597 (Miss. Ct. App. Oct. 20, 2020).

Modification of child custody was appropriate—after the mother alleged that the parties' child had ingested opioids when with the father—because there was substantial evidence to support the chancellor's factual findings that the mother's participation in a scheme to plant illegal drugs in the father's pickup truck to be found by the police and that the mother's tampering with a drug test of the parties' child had resulted in a material change of circumstances. The chancellor also found that the mother's conduct threatened harm to the child. Barbaro v. Smith, 282 So. 3d 578, 2019 Miss. App. LEXIS 322 (Miss. Ct. App. 2019).

16. Family-violence presumption.

Trial court did not abuse its discretion in concluding that the proof did not constitute a history of family violence because the domestic abuse protective orders which the mother entered did not relate to anything but an incident after a basketball game, the facts of which the trial court found to be in dispute, that resulted in no serious injury. Warner v. Thomas, 281 So. 3d 216, 2019 Miss. App. LEXIS 108 (Miss. Ct. App. 2019).

§ 93-5-26. Noncustodial parent's right of access to records and information pertaining to minor children.

OPINIONS OF THE ATTORNEY GENERAL

Absent a chancery court order to the contrary, a school district must release children's school records to the non-custodial parent. Easterling, Aug. 19, 2005, A.G. Op. 05-0433.

CHAPTER 9.

PARENTAGE

Uniform Law on Paternity. 93-9-1

UNIFORM LAW ON PATERNITY

Sec.
93-9-9. Enforcement; attorney's fees and costs; surname of child; request for genetic testing by alleged father; tolling of one-year time limit to rescind voluntary acknowledgement of paternity.
93-9-21. Blood tests and other tests; enforcement of order to submit; notice of witnesses testifying as to sexual intercourse with mother.

§ 93-9-9. Enforcement; attorney's fees and costs; surname of child; request for genetic testing by alleged father; tolling of one-year time limit to rescind voluntary acknowledgement of paternity.

(1) Paternity may be determined upon the petition of the mother, or father, the child or any public authority chargeable by law with the support of the child; provided that such an adjudication after the death of the defendant must be made only upon clear and convincing evidence. If paternity has been lawfully determined, or has been acknowledged in writing according to the laws of this state, the liabilities of the noncustodial parent may be enforced in the same or other proceedings by the custodial parent, the child, or any public authority which has furnished or may furnish the reasonable expenses of pregnancy, confinement, education, necessary support and maintenance, and medical or funeral expenses for the custodial parent or the child. The trier of fact shall receive without the need for third-party foundation testimony certified, attested or sworn documentation as evidence of (a) childbirth records; (b) cost of filing fees; (c) court costs; (d) services of process fees; (e) mailing cost; (f) genetic tests and testing fees; (g) the department's attorney's fees; (h) in

cases where the state or any of its entities or divisions have provided medical services to the child or the child's mother, all costs of prenatal care, birthing, postnatal care and any other medical expenses incurred by the child or by the mother as a consequence of the mother's pregnancy or delivery; and (i) funeral expenses. All costs and fees shall be ordered paid to the Department of Human Services in all cases successfully prosecuted with a minimum of Two Hundred Fifty Dollars ($250.00) in attorney's fees or an amount determined by the court without submitting an affidavit. Proceedings may be instituted at any time until such child attains the age of twenty-one (21) years unless the child has been emancipated as provided in Section 93-5-23 and Section 93-11-65. In the event of court-determined paternity, the surname of the child shall be that of the father, unless the judgment specifies otherwise.

(2) If the alleged father in an action to determine paternity to which the Department of Human Services is a party fails to appear for a scheduled hearing after having been served with process or subsequent notice consistent with the Rules of Civil Procedure, his paternity of the child(ren) shall be established by the court if a written declaration in support of establishing paternity made under penalty of perjury to the best of her knowledge, information and belief by the mother averring the alleged father's paternity of the child has accompanied the complaint to determine paternity. The written declaration shall constitute sufficient grounds for the court's finding of the alleged father's paternity without the necessity of the presence or testimony of the mother at the said hearing. The court shall, upon motion by the Department of Human Services, enter a judgment of paternity. Any person who shall willfully and knowingly file a false affidavit or who shall willfully, intentionally and knowingly file a false written declaration under penalty of perjury shall be subject to a fine of not more than One Thousand Dollars ($1,000.00).

(3) Upon application of both parents to the State Board of Health and receipt by the State Board of Health of a sworn acknowledgement of paternity executed by both parents subsequent to the birth of a child born out of wedlock, the birth certificate of the child shall be amended to show such paternity if paternity is not shown on the birth certificate. Upon request of the parents for the legitimization of a child under this section, the surname of the child shall be changed on the certificate to that of the father.

(4)(a) A signed voluntary acknowledgment of paternity is subject to the right of any signatory to rescind the acknowledgment within the earlier of:

(i) One (1) year; or

(ii) The date of a judicial proceeding relating to the child, including a proceeding to establish a support order, in which the signatory is a party.

(b) After the expiration of the one-year period specified in subsection (4)(a)(i) of this section, a signed voluntary acknowledgment of paternity may be challenged in court only on the basis of fraud, duress or material mistake of fact, with the burden of proof upon the challenger; the legal responsibilities, including child support obligations, of any signatory arising from the acknowledgment may not be suspended during the pendency of the challenge, except for good cause shown.

(c) During the one-year time period specified in subsection (4)(a)(i) of this section, the alleged father may request genetic testing through the Department of Human Services in accordance with the provisions of Section 93-9-21.

(d) The one-year time limit, specified in subsection (4)(a)(i) of this section, for the right of the alleged father to rescind the signed voluntary acknowledgement of paternity shall be tolled from the date the alleged father files his formal application for genetic testing with the Department of Human Services until the date the test results are revealed to the alleged father by the department. After the one-year time period has expired, not including any period of time tolled for the purpose of acquiring genetic testing through the department, the provisions of subsection (4)(b) of this section shall apply.

HISTORY: Codes, 1942, § 383-02; Laws, 1962, ch. 312, § 2; Laws, 1981, ch. 529, § 2; Laws, 1989, ch. 438, § 1; Laws, 1994, ch. 614, § 2; Laws, 1996, ch. 339, § 1; Laws, 1997, ch. 588, § 143; Laws, 1999, ch. 512, § 10; Laws, 2003, ch. 514, § 6; Laws, 2008, ch. 426, § 1; Laws, 2009, ch. 370, § 1; Laws, 2011, ch. 530, § 6, eff from and after July 1, 2011; Laws, 2020, ch. 466, § 2, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment, in (2), substituted "a written declaration in support of establishing paternity made under penalty of perjury to the best of her knowledge, information and belief" for " an affidavit sworn to" in the first sentence, and "The written declaration" for "Said affidavit" in the second sentence, and inserted "or who shall willfully…penalty of perjury" in the last sentence.

JUDICIAL DECISIONS

9. Illustrative cases.

Chancery court erred by changing the surname of a nine-year-old boy at the request of his father and over the objection of his mother because, while "the surname of the child shall be that of the father," given the child's age and history of behavioral issues at school, it was reasonable for the mother and the maternal grandmother to be concerned that a sudden name change could have a negative impact on him, and the father's desire to pass on his family name was not the equivalent of the child's best interest. Olson v. Bennett, 271 So. 3d 781, 2018 Miss. App. LEXIS 648 (Miss. Ct. App. 2018).

OPINIONS OF THE ATTORNEY GENERAL

An acknowledgment of paternity in the manner prescribed prior to July 1, 1994, was sufficient to impose liability upon the natural father. Taylor, January 9, 1998, A.G. Op. #97-0813.

Where the chancery court is contemplating issuing an order directing the Department of Health to change a birth certificate in fact situations covered by Section 41-57-23, the chancery court should require that the Department of Health be made a party to the lawsuit; nevertheless, in cases where a chancery court has ordered the Department of Health to make a correction to a birth certificate without having first made the department a party, the department should proceed based on that court order. Thompson, Jr., Oct. 26, 2000, A.G. Op. #2000-0507.

§ 93-9-15. Jurisdiction and remedies; right to trial by jury.

OPINIONS OF THE ATTORNEY GENERAL

There is no provision for county court judge, except when sitting as youth court judge, to hear or determine custody matter, although county court previously determined paternity in action. Coleman, Jan. 12, 1994, A.G. Op. #93-0974.

§ 93-9-21. Blood tests and other tests; enforcement of order to submit; notice of witnesses testifying as to sexual intercourse with mother.

(1)(a) In all cases brought pursuant to Title IV-D of the Social Security Act, upon written declarations of the mother, putative father, or the Department of Human Services made under penalty of perjury to the best of his or her knowledge, information and belief alleging paternity, the department may issue an administrative order for paternity testing which requires the mother, putative father and minor child to submit themselves for paternity testing. The department shall send the putative father a copy of the Administrative Order and a Notice for Genetic Testing which shall include the date, time and place for collection of the putative father's genetic sample. The department shall also send the putative father a Notice and Complaint to Establish Paternity which shall specify the date and time certain of the court hearing by certified mail, restricted delivery, return receipt requested. Notice shall be deemed complete as of the date of delivery as evidenced by the return receipt. The required notice may also be delivered by personal service upon the putative father in accordance with Rule 4 of the Mississippi Rules of Civil Procedure insofar as service of an administrative order or notice is concerned.

(b) If the putative father does not submit to genetic testing, the court shall, without further notice, on the date and time previously set through the notice for hearing, review the documentation of the refusal to submit to genetic testing and make a determination as to whether the complaint to establish paternity should be granted. The refusal to submit to such testing shall create a rebuttable presumption of an admission to paternity by the putative father.

(c) In any case in which the Department of Human Services orders genetic testing, the department is required to advance costs of such tests subject to recoupment from the alleged father if paternity is established. If either party challenges the original test results, the department shall order additional testing at the expense of the challenging party.

(2) In any case in which paternity has not been established, the court, on its own motion or on motion of the plaintiff or the defendant, shall order the mother, the alleged father and the child or children to submit to genetic tests and any other tests which reasonably prove or disprove the probability of paternity. If paternity has been previously established, the court shall only order genetic testing pursuant to Section 93-9-10.

If any party refuses to submit to such tests, the court may resolve the question of paternity against such party or enforce its order for genetic testing as the rights of others and the interest of justice require.

(3) Any party calling a witness or witnesses for the purpose of testifying that they had sexual intercourse with the mother at any possible time of conception of the child whose paternity is in question shall provide all other parties with the name and address of the witness at least twenty (20) days before the trial. If a witness is produced at the hearing for the purpose provided in this subsection but the party calling the witness failed to provide the twenty-day notice, the court may adjourn the proceeding for the purpose of taking a genetic test of the witness before hearing the testimony of the witness if the court finds that the party calling the witness acted in good faith.

(4) The court shall ensure that all parties are aware of their right to request genetic tests under this section.

(5)(a) Genetic tests shall be performed by a laboratory selected from the approved list as prepared and maintained by the Department of Human Services.

(b) The Department of Human Services shall publicly issue a request for proposals, and such requests for proposals when issued shall contain terms and conditions relating to price, technology and such other matters as are determined by the department to be appropriate for inclusion or required by law. After responses to the request for proposals have been duly received, the department shall select the lowest and best bid(s) on the basis of price, technology and other relevant factors and from such proposals, but not limited to the terms thereof, negotiate and enter into contract(s) with one or more of the laboratories submitting proposals. The department shall prepare a list of all laboratories with which it has contracted on these terms. The list and any updates thereto shall be distributed to all chancery clerks. To be eligible to appear on the list, a laboratory must meet the following requirements:

(i) The laboratory is qualified to do business within the State of Mississippi;

(ii) The laboratory can provide test results in less than fourteen (14) days; and

(iii) The laboratory must have participated in the competitive procurement process.

HISTORY: Codes, 1942, § 383-08; Laws, 1962, ch. 312, § 8; Laws, 1987, ch. 455, § 1; Laws, 1990, ch. 543, § 3; Laws, 1997, ch. 588, § 133; Laws, 1999, ch. 512, § 2; Laws, 2011, ch. 530, § 5, eff from and after July 1, 2011; Laws, 2020, ch. 466, § 3, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment, in (1)(a), substituted "written declarations of" for "sworn documentation by" and inserted "made under penalty of perjury to the best of his or her knowledge, information and belief."

§ 93-9-28. Procedures for voluntary acknowledgement of paternity.

OPINIONS OF THE ATTORNEY GENERAL

Where the chancery court is contemplating issuing an order directing the Department of Health to change a birth certificate in fact situations covered by Section 41-57-23, the chancery court should require that the Department of Health be made a party to the lawsuit; nevertheless, in cases where a chancery court has ordered the Department of Health to make a correction to a birth certificate without having first made the department a party, the department should proceed based on that court order. Thompson, Jr., Oct. 26, 2000, A.G. Op. #2000-0507.

§ 93-9-29. Order.

OPINIONS OF THE ATTORNEY GENERAL

Where the chancery court is contemplating issuing an order directing the Department of Health to change a birth certificate in fact situations covered by Section 41-57-23, the chancery court should require that the Department of Health be made a party to the lawsuit; nevertheless, in cases where a chancery court has ordered the Department of Health to make a correction to a birth certificate without having first made the department a party, the department should proceed based on that court order. Thompson, Jr., Oct. 26, 2000, A.G. Op. #2000-0507.

§ 93-9-43. Prosecuting official.

OPINIONS OF THE ATTORNEY GENERAL

Under Section 93-9-43, if the County Prosecutors Office prosecutes paternity cases each month, it would be entitled to compensation from the county treasury, not to exceed one hundred dollars for any one month, upon an order of the county, circuit, or chancery judge. Belk, August 14, 1995, A.G. Op. #95-0423.

CHAPTER 11.

ENFORCEMENT OF SUPPORT OF DEPENDENTS

IN GENERAL

§ 93-11-65. Custody and support of minor children; additional remedies; determination of emancipation; temporary support awarded pending determination of parentage; effect of military duty on custody and visitation.

JUDICIAL DECISIONS

ANALYSIS

I. CUSTODY OF CHILDREN.

2. Factors in determining custody—extramarital conduct.
4. —Choice of child.
10. Appointment of guardian ad litem.

II. SUPPORT OF CHILDREN.

15. Education or medical expenses.
22. Emancipation.

I. CUSTODY OF CHILDREN.

2. Factors in determining custody—extramarital conduct.

4. —Choice of child.

Two children's preference to live with the children's father did not make awarding the children's custody to the children's mother erroneous because (1) the children's preference was non-binding, and (2) the children's preference was accounted for by awarding the father extra visitation. Thomas v. Thomas, 281 So. 3d 1191, 2019 Miss. App. LEXIS 270 (Miss. Ct. App. 2019).

Chancellor did not err in refusing to allow a 12-year-old to state a preference where the chancellor had concerns that the mother had coached the child on what to say, although the child wanted to live with the mother based upon a proffer), and the preference of the child did not have much bearing considering that the majority of the Albright factors favored the father. Sheridan v. Cassidy, 273 So. 3d 783, 2018 Miss. App. LEXIS 628 (Miss. Ct. App. 2018), cert. denied, 272 So. 3d 130, 2019 Miss. LEXIS 226 (Miss. 2019).

Chancellor did not err by awarding physical custody of a child to the husband because the child expressed a desire to live with the husband; the chancellor considered the relevant Albright factors, and there was no indication that the chancellor placed undue weight on the preference of the child. Bradshaw v. Bradshaw, — So. 3d —, 2019 Miss. App. LEXIS 386 (Miss. Ct. App. Aug. 13, 2019), cert. denied, 289 So. 3d 311, 2020 Miss. LEXIS 66 (Miss. 2020), cert. denied, — So. 3d —, 2020 Miss. LEXIS 169 (Miss. 2020).

10. Appointment of guardian ad litem.

Chancery court did not abuse its discretion by not appointing a guardian ad litem (GAL) sua sponte in a contempt proceeding because a mother never asked the chancery court to appoint a GAL; the appointment of a GAL was not mandatory because the mother failed to cite to any concrete allegation of abuse. Brown v. Hewlett, 281 So. 3d 189, 2019 Miss. App. LEXIS 94 (Miss. Ct. App. 2019).

Chancellor sufficiently addressed a report by a guardian ad litem (GAL) report because the chancellor's ruling was consistent with the GAL's recommendation. Furthermore, the chancellor did not err or abuse its discretion by giving the GAL's opinion some weight because the GAL's testimony did not indicate bias, prejudgment of the case, or an improper view of his role, but simply reflected that, based on the evidence gathered during the investigation, the GAL had a definite opinion as to which parent was to have custody. Barbaro v. Smith, 282 So. 3d 578, 2019 Miss. App. LEXIS 322 (Miss. Ct. App. 2019).

II. SUPPORT OF CHILDREN.

15. Education or medical expenses.

Chancellor did not abuse its discretion by not ordering a wife to pay child support for a child who was attending college away from home during the duration of the parties' divorce proceedings and by not ordering the wife to pay child support, including college expenses, for the year preceding the filing of the husband's complaint. Pettersen v. Pettersen, 269 So. 3d 466, 2018 Miss. App. LEXIS 529 (Miss. Ct. App. 2018), cert. denied, 268 So. 3d 1282, 2019 Miss. LEXIS 182 (Miss. 2019).

22. Emancipation.

Chancery court erred in determining that a child was emancipated for child support purposes was sometime in August where there was no solid testimony as to when her summer classes ended nor any school records to show the state and end dates of her full-time enrollment in school. Instead, the correct emancipation date was the date the child joined the military. Ratliff v. Ratliff, 271 So. 3d 697, 2018 Miss. App. LEXIS 629 (Miss. Ct. App. 2018).

OPINIONS OF THE ATTORNEY GENERAL

For purposes of verification of the expenditures for Maintenance of Effort as part of the audit of the Department of Human Services' (DHS) Temporary Assistance to Needy Families program, it is within the discretion of DHS to define "child" as anyone who has not yet attained their 24th birthday. Bryant, Sept. 6, 2002, A.G. Op. #02-0541.

§ 93-11-71. Judgment for overdue child support; forgiveness of arrears under certain circumstances; credit toward arrearage under certain circumstances.

JUDICIAL DECISIONS

2. Credits against arrearages.

It was error to award a father a credit against the father's child support arrearage for the entire amount of a lump sum payment of past-due Social Security benefits payable to the children on account of the father's disability because the father was only entitled to such a credit for benefits paid after the onset of disability when the father was under a child support order. Thomas v. Thomas, 281 So. 3d 1191, 2019 Miss. App. LEXIS 270 (Miss. Ct. App. 2019).

CHAPTER 13.

PARENTAL GUARDIANSHIP

Wards, Generally. 93-13-1
Incompetent Persons, Convicts, Drunkards and Drug Addicts. 93-13-121
Restoration to Reason. 93-13-151
Armed Forces Personnel. 93-13-161
Nonresident Guardians. 93-13-181
Small Transactions Performed Without Guardianship. 93-13-211
Conservators. 93-13-251
Joinder of Parties in Suits Involving Wards. 93-13-281

WARDS, GENERALLY

§ 93-13-1. Parental guardianship of minor children.

JUDICIAL DECISIONS

10. Child support.

Chancery court erred in a divorce by failing to address child support in relation to the wife's child from a previous relationship when the court awarded custody of the child to the wife because the husband's duties and obligations to support the child vested upon the husband's adoption of the child as the husband's child. Therefore, remand was necessary for the chancery court to determine whether child support for the child was warranted, and if so, in what amount. Hackler v. Hackler, 296 So. 3d 773, 2020 Miss. App. LEXIS 313 (Miss. Ct. App. 2020).

OPINIONS OF THE ATTORNEY GENERAL

The county identification number may not be utilized for a guardianship or receivership account. Creekmore, May 30, 2003, A.G. Op. #03-0035.

§§ 93-13-35 through 93-13-79. Repealed.

Repealed by Laws, 2019, ch. 463, § 11, eff from and after January 1, 2020.

§ 93-13-3. [Codes, 1930, § 1864; 1942, § 400; Laws, 1922, ch. 266.

§ 93-13-5. [Codes, 1880, § 2099; 1892, § 2192; 1906, § 2409; Hemingway's 1917, § 1970; 1930, § 1865; 1942, § 401; Laws, 1972, ch. 408, § 1, eff from and after July 1, 1972.]

§ 93-13-7. [Codes, Hutchinson's 1848, ch 36, art. 1(122); 1857, ch. 60, art. 140; 1871, § 1203; 1880, § 2095; 1892, § 2184; 1906, § 2401; Hemingway's 1917, § 1962; 1930, § 1866; 1942, § 402; Laws, 1972, ch. 408, § 3, eff from and after July 1, 1972.]

§ 93-13-9. [Codes, Hutchinson's 1848, ch. 36, art. 1(123, 124); 1857, ch. 60, art. 141; 1880, § 2096; 1892, § 2185; 1906, § 2402; Hemingway's 1917, § 1963; 1930, § 1867; 1942, § 403; Laws, 1972, ch. 408, § 4, eff from and after July 1, 1972.]

§ 93-13-11. [Codes, Hutchinson's 1848, ch. 36, art. 1(122); 1857, ch. 60, art. 140; 1871, § 1203; 1880, § 2095; 1892, § 2184; 1906, § 2401; Hemingway's 1917, § 1962; 1930, § 1866; 1942, § 402.]

§ 93-13-13. [Codes, Hutchinson's 1848, ch 36, art. 1(125); 1857, ch. 60, art. 142; 1871, § 1202; 1880, § 2097; 1892, § 2186; 1906, § 2403; Hemingway's 1917, § 1964; 1930, § 1868; 1942, § 404; Laws, 1960, ch. 215; Laws, 1972, ch. 408, § 5, eff from and after July 1, 1972.]

§ 93-13-15. [Codes, 1942, § 404.5; Laws, 1960, ch. 220, §§ 1-4; Laws, 1972, ch. 408, § 6; Laws, 1994, ch. 589, § 5; Laws, 1999, ch. 374, § 5; Laws, 2002, ch. 614, § 1; Laws, 2008, ch. 452, § 5, eff from and after passage (approved Apr. 8, 2008).]

§ 93-13-17. [Codes, Hutchinson's 1848, ch. 36, art. 1(126); 1857, ch. 60, art. 143; 1871, §§ 1206, 1208; 1880, § 2098; 1892, § 2187; 1906, § 2404; Hemingway's 1917, § 1965; 1930, § 1869; 1942, § 405; Laws, 1972, ch. 408, § 7; Laws, 1987, ch. 368; Laws, 2001, ch. 422, § 5, eff from and after July 1, 2001.]

§ 93-13-19. [Codes, 1880, § 1986; 1892, § 2188; 1906, § 2405; Hemingway's 1917, § 1966; 1930, § 1870; 1942, § 406.]

§ 93-13-21. [Codes, 1880, § 2117; 1892, § 2189; 1906, § 2406; Hemingway's 1917, § 1967; 1930, § 1871; 1942, § 407; Laws, 1896, ch. 92; Laws, 1928, ch. 148; Laws, 1972, ch. 408, § 8, eff from and after July 1, 1972.]

§ 93-13-23. [Codes, Hutchinson's 1848, ch. 36, art. 1(129, 134); 1857, ch. 60, art. 145; 1871, § 2110; 1880, § 2101; 1892, § 2190; 1906, § 2407; Hemingway's 1917, § 1968; 1930, § 1872; 1942, § 408.]

§ 93-13-25. [Codes, 1880, § 2107; 1892, § 2191; 1906, § 2408; Hemingway's 1917, § 1969; 1930, § 1873; 1942, § 409.]

§ 93-13-27. [Codes, Hutchinson's 1848, ch. 36, art. 1(125); 1857, ch. 60, art. 142; 1871, § 1202; 1880, § 2097; 1892, § 2186; 1906, § 2403; Hemingway's 1917, § 1964; 1930, § 1868; 1942, § 404; Laws, 1960, ch. 215; Laws, 1972, ch. 408, § 5, eff from and after July 1, 1972.]

§ 93-13-29. [Codes, 1906, § 2429; Hemingway's 1917, § 1990; 1930, § 1909; 1942, § 446; Laws, 1904, ch. 149.]

§ 93-13-31. [Codes, Hutchinson's 1848, ch. 36, art. 1(127); 1857, ch. 60, art. 144; 1871, § 1209; 1880, § 2100; 1892, § 2193; 1906, § 2410; Hemingway's 1917, § 1971; 1930, § 1874; 1942, § 410.]

§ 93-13-33. [Codes, Hutchinson's 1848, ch. 36, art. 1(128); 1857, ch. 60, art. 146; 1871, § 1214; 1880, § 2102; 1892, § 2195; 1906, § 2412; Hemingway's 1917, § 1973; 1930, § 1875; 1942, § 411.]

§ 93-13-35. [Codes, Hutchinson's 1848, ch. 36, art. 1(131); 1857, ch. 60, art. 150; 1871, § 1220; 1880, § 2109; 1892, § 2197; 1906, § 2413; Hemingway's 1917, § 1974; 1930, § 1876; 1942, § 412; Laws, 1894, ch. 57.]

§ 93-13-37. [Codes, 1880, § 2111; 1892, § 2198; 1906, § 2414; Hemingway's 1917, § 1975; 1930, § 1877; 1942, § 413; Laws, 2013, ch. 339, § 1, eff from and after July 1, 2013.]

§ 93-13-38. [Codes, Hutchinson's 1848, ch. 36, art. 1(136, 137); 1857, ch. 60, arts. 155, 156; 1871, §§ 1242, 1244; 1880, §§ 2119, 2120; 1892, §§ 2219, 2220; 1906, §§ 2437, 2438; Hemingway's 1917, §§ 1998, 1999; 1930, §§ 1902, 1903; 1942, §§ 439, 440; Laws, 1896, ch. 97; Laws, 1924, ch. 164; Laws, 1938, ch. 271; Laws, 1960, chs. 217, 218; Laws, 1972, ch. 408, §§ 15, 16; Laws, 1996, ch. 462, § 1; Laws, 2013, ch. 554, § 1, eff from and after July 2, 2013.]

§ 93-13-39. [Codes, 1942, § 413.5; Laws, 1948, ch 235, § 1.]

§ 93-13-41. [Codes, Hutchinson's 1848, ch. 36, art. 1(130); 1857, ch. 60, art. 149; 1871, § 1219; 1880, § 2108; 1892, § 2202; 1906, § 2418; Hemingway's 1917, § 1979; 1930, § 1878; 1942, § 414; Laws, 1896, ch. 95; Laws, 1930, ch. 38; Laws, 1972, ch. 408, § 9, eff from and after July 1, 1972.]

§ 93-13-43. [Codes, 1930, § 1879; 1942, § 415; 1930, ch 38; Laws, 1972, ch. 408, § 10; Laws, 1981, ch. 442, § 1, eff from and after July 1, 1981.]

§ 93-13-45. [Codes, 1880, § 2112; 1892, § 2203; 1906, § 2419; Hemingway's 1917, § 1980; 1930, § 1880; 1942, § 416.]

§ 93-13-47. [Codes, 1906, § 2420; Hemingway's 1917, § 1981; 1930, § 1881; 1942, § 417; Laws, 1900, ch. 91; Laws, 1914, ch. 202; Laws, 1958, ch. 234; Laws, 1960, ch. 216.]

§ 93-13-49. [Codes, 1857, ch. 60, art. 154; 1871, § 1224; 1880, § 2116; 1892, § 2206; 1906, § 2423; Hemingway's 1917, § 1984; 1930, § 1882; 1942, § 418.]

§ 93-13-51. [Codes, Hutchinson's 1848, ch. 36, art. 1(132); 1857, ch. 60, art. 151; 1871, § 1221; 1880, § 2113; 1892, § 2205; 1906, § 2422; Hemingway's 1917, § 1983; 1930, § 1883; 1942, § 419; Laws, 1940, ch. 250; Laws, 1946, ch. 415, §§ 1, 2; Laws, 1972, ch. 408, § 12, eff from and after July 1, 1972.]

§ 93-13-53. [Codes, 1871, § 1221; 1880, § 2106; 1892, § 2201; 1906, § 2417; Hemingway's 1917, § 1978; 1930, § 1884; 1942, § 420.]

§ 93-13-55. [Codes, 1942, § 420.5; Laws, 1954, ch. 217, §§ 1, 2 (¶¶ 1, 2); Laws, 2013, ch. 339, § 2, eff from and after July 1, 2013.]

§ 93-13-57. [Codes, Hutchinson's 1848, ch. 36, art. 1(133); 1857, ch. 60, art. 147; 1871, § 1217; 1880, § 2105; 1892, § 2200; 1906, § 2416; Hemingway's 1917, § 1977; 1930, § 1885; 1942, § 421; Laws, 1914, ch. 201; Laws, 1952, ch. 251; Laws, 1954, ch. 240; Laws, 2013, ch. 339, § 3, eff from and after July 1, 2013.]

§ 93-13-59. [Codes, 1880, § 2110; 1892, § 2204; 1906, § 2421; Hemingway's 1917, § 1982; 1930, § 1886; 1942, ch. 422.]

§ 93-13-61. [Codes, 1857, ch. 60, art. 158; 1871, § 1228; 1880, § 2124; 1892, § 2207; 1906, § 2424; Hemingway's 1917, § 1985; 1930, § 1904; 1942, § 441; Laws, 1991, ch. 441, § 1, eff from and after July 1, 1991.]

§ 93-13-63. [Codes, 1857, ch. 60, art. 159; 1871, § 1229; 1880, § 2125; 1892, § 2208; 1906, § 2425; Hemingway's 1917, § 1986; 1930, § 1905; 1942, § 442.]

§ 93-13-65. [Codes, 1857, ch. 60, art. 145; 1871, § 1213; 1880, § 2101; 1892, § 2199; 1906, § 2415; Hemingway's 1917, § 1976; 1930, § 1887; 1942, § 423.]

§ 93-13-67. [Codes, Hutchinson's 1848, ch. 36, art. 1(128); 1857, ch. 60, art. 147; 1871, §§ 1214, 1215; 1880, § 2103; 1892, § 2222; 1906, § 2441; Hemingway's 1917, § 2002; 1930, § 1889; 1942, § 425; Laws, 1960, ch. 217, § 1; Laws, 1962, ch. 273; Laws, 1966, ch. 320, § 1; Laws, 1972, ch. 408, § 13; Laws, 1974, ch. 365; Laws, 2013, ch. 339, § 4; Laws, 2013, ch. 554, § 2, eff from and after July 2, 2013.]

§ 93-13-69. [Codes, 1880, § 2104; 1892, § 2194; 1906, § 2411; Hemingway's 1917, § 1972; 1930, § 1888; 1942, § 424.]

§ 93-13-71. [Codes, 1892, § 2224; 1906, § 2443; Hemingway's 1917, § 2004; 1930, § 1890; 1942, § 426; Laws, 1960, ch. 217, § 2.]

§ 93-13-73. [Codes, 1942, § 426.5; Laws, 1960, ch. 217, § 11.]

§ 93-13-75. [Codes, Hutchinson's 1848, ch. 36, art. 1(135); 1857, ch. 60, art. 148; 1871, § 1218; 1880, § 2107; 1892, § 2223; 1906, § 2442; Hemingway's 1917, § 2003; 1930, § 1892; 1942, § 428; Laws, 1936, ch. 235; Laws, 1938, Ex. ch. 54; Laws, 1958, ch. 284; Laws, 1962, ch. 274; Laws, 1978, ch. 366, § 1; Laws, 1991, ch. 441, § 2, eff from and after July 1, 1991.]

§ 93-13-77. [Codes, Hutchinson's 1848, ch. 36, art. 1(135); 1857, ch. 60, art. 148; 1871, § 1218; 1880, § 2107; 1892, § 2225; 1906, § 2444; Hemingway's 1917, § 2005; 1930, § 1893; 1942, § 429; Laws, 1898, ch. 63; Laws, 1960, ch. 217, § 3; Laws, 2013, ch. 339, § 5; Laws, 2013, ch. 554, § 3, eff from and after July 2, 2013.]

§ 93-13-79. [Codes, 1892, § 2221; 1906, § 2439; Hemingway's 1917, § 2000; 1930, § 1891; 1942, § 427; Laws, 1882, p. 113.]

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in Section 11 of Chapter 463, Laws of 2019, by substituting "93-13-17" for "9-13-17" in the list of sections repealed by Section 11. Given the title of the bill and the context of the other sections being repealed, it is clear that "9-13-17" was a typographical error. The Joint Committee ratified the correction at its October 19, 2020, meeting.

Editor's Note — Former § 93-13-3 related to the award of guardianship where parents live apart and the limitation of a mother's liability. See Chapter 20 of this title for current provisions relating to guardianship and conservatorship.

Former § 93-13-5 related to when a guardian was not entitled to custody of a ward. See Chapter 20 of this title for current provisions relating to guardianship and conservatorship.

Former § 93-13-7 related to the appointment of testamentary guardians. See Chapter 20 of this title for current provisions relating to guardianship and conservatorship.

Former § 93-13-9 required a testamentary guardian to accept guardianship in writing and qualify before exercising authority over the ward or the ward's estate. See Chapter 20 of this title for current provisions relating to guardianship and conservatorship.

Former § 93-13-11 related to the rights, duties and liabilities of testamentary guardians. See Chapter 20 of this title for current provisions relating to guardianship and conservatorship.

Former § 93-13-13 related to court-appointed guardians. See Chapter 20 of this title for current provisions relating to guardianship and conservatorship.

Former § 93-13-15 provided a guardian appointed by the chancery court was a general guardian. See Chapter 20 of this title for current provisions relating to guardianship and conservatorship.

Former § 93-13-17 required guardians to enter into bond and take and subscribe an oath. See Chapter 20 of this title for current provisions relating to guardianship and conservatorship.

Former § 93-13-19 provided for the appointment of a guardian pending an appeal from a grant of guardianship. See Chapter 20 of this title for current provisions relating to guardianship and conservatorship.

Former § 93-13-21 provided for the appointment of the court clerk as guardian if someone will not qualify as guardian of a ward who has property. See Chapter 20 of this title for current provisions relating to guardianship and conservatorship.

Former § 93-13-23 related to the removal of a guardian for cause. See Chapter 20 of this title for current provisions relating to guardianship and conservatorship.

Former § 93-13-25 provided that guardians may resign and that the court may fill the vacancy. See Chapter 20 of this title for current provisions relating to guardianship and conservatorship.

Former § 93-13-27 provided that judicial proceedings on behalf of a ward were to be brought in the name of guardian. See Chapter 20 of this title for current provisions relating to guardianship and conservatorship.

Former § 93-13-29 provided that the parent of a nonresident minor may bring suit in state under certain circumstances. See Chapter 20 of this title for current provisions relating to guardianship and conservatorship.

Former § 93-13-31 required the property of a ward be delivered to a qualified guardian. See Chapter 20 of this title for current provisions relating to guardianship and conservatorship.

Former § 93-13-33 required guardians to provide the court, within three months of appointment, an inventory of the estate. See Chapter 20 of this title for current provisions relating to guardianship and conservatorship.

Former § 93-13-35 provided for an allowance for maintenance and education of the ward. See Chapter 20 of this title for current provisions relating to guardianship and conservatorship.

Former § 93-13-37 related to the expense of maintenance and education of a ward who has a parent and the appointment of a special general guardian under certain circumstances. See Chapter 20 of this title for current provisions relating to guardianship and conservatorship.

Former § 93-13-38 (Code 1942, §§ 439, 440, from which § 93-13-137 was derived, was substantially amended by Laws, 1972, ch. 408, §§ 15, 16, so as to make the provisions applicable to any and all persons under every form of legal disability, and as a result, it was re-numbered § 93-13-38 in order that it may appear along with other sections dealing with wards generally) related to the general duties and powers of guardians. See Chapter 20 of this title for current provisions relating to guardianship and conservatorship.

Former § 93-13-39 provided for payment of ward's life insurance premiums. See Chapter 20 of this title for current provisions relating to guardianship and conservatorship.

Former § 93-13-41 required certain care of ward's real estate by guardian. See Chapter 20 of this title for current provisions relating to guardianship and conservatorship.

Former § 93-13-43 related to a guardian's leasing or granting of gas, oil and other mineral rights if in the best interest of the ward. See Chapter 20 of this title for current provisions relating to guardianship and conservatorship.

Former § 93-13-45 provided that a guardian may be authorized by the court to expend a ward's money on improvements on the ward's land and may be authorized to convert property into money. See Chapter 20 of this title for current provisions relating to guardianship and conservatorship.

Former § 93-13-47 provided that a guardian may create, extend or renew encumbrances upon ward's real or personal property. See Chapter 20 of this title for current provisions relating to guardianship and conservatorship.

Former § 93-13-49 provided that a guardian may be authorized by the court to purchase real estate for a ward. See Chapter 20 of this title for current provisions relating to guardianship and conservatorship.

Former § 93-13-51 related to guardian's petition to the court for the sale of part or all of a ward's real estate including reasons why the sale would benefit the ward. See Chapter 20 of this title for current provisions relating to guardianship and conservatorship.

Former § 93-13-53 provided that the court may order the sale of a ward's personal property. See Chapter 20 of this title for current provisions relating to guardianship and conservatorship.

Former § 93-13-55 related to a guardian's application to the court for directions as to the disposition of stocks, bonds, or other securities or investments of the ward. See Chapter 20 of this title for current provisions relating to guardianship and conservatorship.

Former § 93-13-57 related to the disposal of surplus money and the penalty for failure to report surplus to court. See Chapter 20 of this title for current provisions relating to guardianship and conservatorship.

Former § 93-13-59 related to the sale or compromise of doubtful claims. See Chapter 20 of this title for current provisions relating to guardianship and conservatorship.

Former § 93-13-61 related to the removal of a ward and property to another county within the state. See Chapter 20 of this title for current provisions relating to guardianship and conservatorship.

Former § 93-13-63 related to the removal of a ward and property from the state. See Chapter 20 of this title for current provisions relating to guardianship and conservatorship.

Former § 93-13-65 related to the seizure of property about to be unlawfully removed by a guardian. See Chapter 20 of this title for current provisions relating to guardianship and conservatorship.

Former § 93-13-67 required the guardian to provide an annual, or more frequently if required, account, provided a minimum commission payable at the time of the annual account, and allowed the closure of a guardianship file without a final accounting under certain circumstances. See Chapter 20 of this title for current provisions relating to guardianship and conservatorship.

Former § 93-13-69 required that the accounts of a guardian with each of several wards be kept separate. See Chapter 20 of this title for current provisions relating to guardianship and conservatorship.

Former § 93-13-71 required that guardian vouchers conform to all requirements relating to vouchers of executors and administrators. See Chapter 20 of this title for current provisions relating to guardianship and conservatorship.

Former § 93-13-73 required the production and exhibition of vouchers not otherwise required to be filed for examination and inspection. See Chapter 20 of this title for current provisions relating to guardianship and conservatorship.

Former § 93-13-75 related to when a guardianship ceased. See Chapter 20 of this title for current provisions relating to guardianship and conservatorship.

Former § 93-13-77 related to the final account and settlement upon cessation of guardianship and provided that a guardianship could close without a final accounting under certain circumstances. See Chapter 20 of this title for current provisions relating to guardianship and conservatorship.

Former § 93-13-79 entitled guardians to credit for solicitor's fees. See Chapter 20 of this title for current provisions relating to guardianship and conservatorship.

PERSONS IN NEED OF MENTAL TREATMENT

§ 93-13-111. Appointment of guardians of person and estate, or either, for persons in need of mental treatment [Repealed effective January 1, 2020].

Repealed by Laws, 2019, ch. 463, § 12, eff from and after January 1, 2020. § 93-13-111. [Laws, 1976, ch. 376, § 1; brought forward without change, Laws, 2014, ch. 384, § 2, eff from and after July 1, 2014.]

Editor's Note — Former § 93-13-111 related to the appointment of guardians for wards in need of mental health treatment. See Chapter 20 of this title for current provisions relating to guardianship and conservatorship.

INCOMPETENT PERSONS, CONVICTS, DRUNKARDS AND DRUG ADDICTS

§§ 93-13-121 through 93-13-135. Repealed.

Repealed by Laws, 2019, ch. 463, § 13, eff from and after January 1, 2020.

§ 93-13-121. [Codes, 1942, § 434; Laws, 1938, ch. 263; Laws, 1972, ch. 408, § 14; Laws, 2008, ch. 442, § 30, eff from and after July 1, 2008.]

§ 93-13-123. [Codes, Hemingway's 1917, § 397; 1930, § 1896; 1942, § 432; Laws, 1914, ch. 159; Laws, 1920, ch. 317; Laws, 1956, ch. 210, §§ 1, 2; Laws, 2008, ch. 442, § 29, eff from and after July 1, 2008.]

§ 93-13-125. [Codes, Hemingway's 1917, § 397; 1930, § 1896; 1942, § 432; Laws, 1914, ch. 159; Laws, 1920, ch. 317; Laws, 1956, ch. 210, §§ 1, 2, eff. July 1, 1956.]

§ 93-13-127. [Codes, Hemingway's 1917, § 398; 1930, § 1897; 1942, § 433; Laws, 1914, ch. 159; Laws, 1920, ch. 317; brought forward without change, Laws, 2014, ch. 384, § 3, eff from and after July 1, 2014.]

§ 93-13-128. [Laws, 1976, ch. 376, § 3, eff from and after passage (approved April 26, 1976).]

§ 93-13-129. [Codes, 1880, § 2122; 1892, § 2214; 1906, § 2432; Hemingway's 1917, § 1993; 1930, § 1895; 1942, § 431.]

§ 93-13-131. [Codes, 1892, § 2215; 1906, § 2433; Hemingway's 1917, § 1994; 1930, § 1898; 1942, § 435; Laws, 1950, ch. 349, § 13; Laws, 2008, ch. 442, § 31, eff from and after July 1, 2008.]

§ 93-13-133. [Codes, 1892, § 2216; 1906, § 2434; Hemingway's 1917, § 1995; 1930, § 1900; 1942, § 437.]

§ 93-13-135. [Codes, 1880, § 2123; 1892, § 2218; 1906, § 2436; Hemingway's 1917, § 1997; 1930, § 1901; 1942, § 438; Laws, 2012, ch. 529, § 2, eff from and after July 1, 2012.]

Editor's Note — Former § 93-13-121 related to the appointment of a guardian for an incompetent adult. See Chapter 20 of this title for current provisions relating to guardianship and conservatorship.

Former § 93-13-123 appointment of guardian for incompetent nonresident adult. See Chapter 20 of this title for current provisions relating to guardianship and conservatorship.

Former § 93-13-125 related to the appointment of guardian for resident confined but not properly adjudged mentally unsound. See Chapter 20 of this title for current provisions relating to guardianship and conservatorship.

Former § 93-13-127 related to the qualifications and powers of guardians for persons of unsound mind and the jurisdiction and powers of the chancery court. See Chapter 20 of this title for current provisions relating to guardianship and conservatorship.

Former § 93-13-128 provided that a guardianship is not affected by statutory provisions for commitment of persons in need of mental treatment. See Chapter 20 of this title for current provisions relating to guardianship and conservatorship.

Former § 93-13-129 related to the appointment of the clerk of the chancery court when no one qualifies as a guardian of a person of unsound mind. See Chapter 20 of this title for current provisions relating to guardianship and conservatorship.

Former § 93-13-131 related to appointment of guardians for "habitual drunkards and drug addicts." See Chapter 20 of this title for current provisions relating to guardianship and conservatorship.

Former § 93-13-133 related to cessation of guardianship for "habitual drunkards and drug addicts." See Chapter 20 of this title for current provisions relating to guardianship and conservatorship.

Former § 93-13-135 related to the appointment of guardians for offenders who are incarcerated in the penitentiary for a year or longer, the cessation of said guardianship, and the appointment of a guardian to make health-care decisions for offenders. See Chapter 20 of this title for current provisions relating to guardianship and conservatorship.

RESTORATION TO REASON

§ 93-13-151. Procedure for restoration to reason; discharge of guardian [Repealed effective January 1, 2020].

Repealed by Laws, 2019, ch. 463, § 14, eff from and after January 1, 2020.

§ 93-13-151. [Laws, 1976, ch. 376, § 2, eff from and after passage (approved April 26, 1976).]

Editor's Note — Former § 93-13-151 related to the procedure following restoration of reason and discharge of the guardian. See Chapter 20 of this title for current provisions relating to guardianship and conservatorship.

ARMED FORCES PERSONNEL

§ 93-13-161. Appointment of guardian for estate of person in armed forces listed as missing, etc. [Repealed effective January 1, 2020].

Repealed by Laws, 2019, ch. 463, § 15, eff from and after January 1, 2020.

§ 93-13-161. [Codes, 1942, § 450-01; Laws, 1946, ch. 309, §§ 1-3.]

Editor's Note — Former § 93-13-161 related to the appointment of a guardian for the estate of a person in the armed forces listed as missing. See Chapter 20 of this title for current provisions relating to guardianship and conservatorship.

NONRESIDENT GUARDIANS

§§ 93-13-181 through 93-13-187. Repealed.

Repealed by Laws, 2019, ch. 463, § 16, eff from and after January 1, 2020.

§ 93-13-181. [Codes, Hemingway's 1921 Supp. § 2005a; 1930, § 1906; 1942, § 443; Laws, 1918, ch. 236; Laws, 1972, ch. 408, § 17, eff from and after July 1, 1972.]

§ 93-13-183. [Codes, Hemingway's 1921 Supp, § 2005c; 1930, § 1908; 1942, § 445; Laws, 1918, ch. 236.]

§ 93-13-185. [Codes, Hemingway's 1921 Supp, § 2005b; 1930, § 1907; 1942, § 444; Laws, 1918, ch. 236.]

§ 93-13-187. [Codes, Hemingway's 1921 Supp. § 2005d; 1930, § 1910; 1942, § 447; Laws, 1918, ch. 236; Laws, 1960, ch. 219; Laws, 1972, ch. 408, § 18, eff from and after July 1, 1972.]

Editor's Note — Former § 93-13-181 related to the appointment of a nonresident guardian when a ward's property is in MS. See Chapter 20 of this title for current provisions relating to guardianship and conservatorship.

Former § 93-13-183 provided nonresident guardians may sue in Mississippi for ward's property. See Chapter 20 of this title for current provisions relating to guardianship and conservatorship.

Former § 93-13-185 related to how a ward's property may be removed from Mississippi. See Chapter 20 of this title for current provisions relating to guardianship and conservatorship.

Former § 93-13-187 defined the term “guardian.” See Chapter 20 of this title for current provisions relating to guardianship and conservatorship.

SMALL TRANSACTIONS PERFORMED WITHOUT GUARDIANSHIP

§§ 93-13-211 through 93-13-219. Repealed.

Repealed by Laws, 2019, ch. 463, § 17, eff from and after January 1, 2020.

§ 93-13-211. [Codes, 1880, § 2073; 1892, § 1958; 1906, § 2132; Hemingway's 1917, § 1800; 1930, § 1911; 1942, § 448; Laws, 1918, ch. 126; Laws, 1938, ch. 272; Laws, 1944, ch. 308, § 1; Laws, 1956, ch. 211; Laws, 1962, ch. 275; Laws, 1964, ch. 292; Laws, 1972, ch. 408, § 19; Laws, 1986, ch. 387; Laws, 2010, ch. 552, § 1, eff from and after July 1, 2010.]

§ 93-13-213. [Codes, 1880, § 2073; 1892, § 1958; 1906, § 2132; Hemingway's 1917, § 1800; 1930, § 1911; 1942, § 448; Laws, 1918, ch. 126; Laws, 1938, ch. 272; Laws, 1944, ch. 308, § 1; Laws, 1956, ch. 211; Laws, 1962, ch. 275; Laws, 1964, ch. 292; Laws, 1972, ch. 408, § 19, eff from and after July 1, 1972.]

§ 93-13-215. [Codes, 1880, § 2073; 1892, § 1958; 1906, § 2132; Hemingway's 1917, § 1800; 1930, § 1911; 1942, § 448; Laws, 1918, ch. 126; Laws, 1938, ch. 272; Laws, 1944, ch. 308, § 1; Laws, 1956, ch. 211; Laws, 1962, ch. 275; Laws, 1964, ch. 292; Laws, 1972, ch. 408, § 19, eff from and after July 1, 1972.]

§ 93-13-217. [Codes, 1930, §§ 1912, 1913; 1942, §§ 449, 450; Laws, 1922, ch. 285; Laws, 1962, ch. 276; Laws, 1964, ch. 293; Laws, 1966, ch. 321, § 1; Laws, 1971, ch. 356, § 1; Laws, 1972, ch. 408, § 20; Laws, 1981, ch. 452, § 1; Laws, 1991, ch. 338, § 1, eff from and after July 1, 1991.]

§ 93-13-219. [Codes, 1930, § 1913; 1942, § 450.]

Editor's Note — Former § 93-13-211 related to money or personal property not exceeding $25,000 entitled to ward. See Chapter 20 of this title for current provisions relating to guardianship and conservatorship.

Former § 93-13-213 related to delay rental due a ward under oil, gas, or mineral leases. See Chapter 20 of this title for current provisions relating to guardianship and conservatorship.

Former § 93-13-215 related to royalties, etc. due ward under oil, gas and mineral leases. See Chapter 20 of this title for current provisions relating to guardianship and conservatorship.

Former § 93-13-217 related to a ward' undivided interest in real estate that was sold without a guardianship in certain cases. See Chapter 20 of this title for current provisions relating to guardianship and conservatorship.

Former § 93-13-219 related to the summons and conduct of proceeding in the sale of an undivided interest in real estate. See Chapter 20 of this title for current provisions relating to guardianship and conservatorship.

CONSERVATORS

§§ 93-13-251 through 93-13-267. Repealed.

Repealed by Laws, 2019, ch. 463, § 18, eff from and after January 1, 2020.

§ 93-13-251. [Codes, 1942, § 434-01; Laws, 1962, ch. 281, § 1; Laws, 2008, ch. 496, § 1; brought forward without change, Laws, 2014, ch. 384, § 4, eff from and after July 1, 2014.]

§ 93-13-253. [Codes, 1942, § 434-02; Laws, 1962, ch. 281, § 2; Laws, 2008, ch. 496, § 2, eff from and after July 1, 2008.]

§ 93-13-255. [Codes, 1942, § 434-03; Laws, 1962, ch. 281, § 3; Laws, 1984, ch. 520, § 4; Laws, 1993, ch. 511, § 1, eff from and after July 1, 1993.]

§ 93-13-257. [Codes, 1942, § 434-04; Laws, 1962, ch. 281, § 4, eff from and after passage (approved March 20, 1962).]

§ 93-13-259. [Codes, 1942, § 434-05; Laws, 1962, ch. 281, § 5, eff from and after passage (approved March 20, 1962).]

§ 93-13-261. [Codes, 1942, § 434-06; Laws, 1962, ch. 281, § 6, eff from and after passage (approved March 20, 1962).]

§ 93-13-263. [Codes, 1942, § 434-09; Laws, 1962, ch. 281, § 9, eff from and after passage (approved March 20, 1962).]

§ 93-13-265. [Codes, 1942, § 434-08; Laws, 1962, ch. 281, § 8, eff from and after passage (approved March 20, 1962).]

§ 93-13-267. [Codes, 1942, § 434-07; Laws, 1962, ch. 281, § 7, eff from and after passage (approved March 20, 1962).]

Editor's Notes — Former § 93-13-251 related to a petition for the appointment of a conservator and the jurisdiction of the chancery court. See Chapter 20 of this title for current provisions relating to guardianship and conservatorship.

Former § 93-13-253 related to the notice of time and place of hearings and who must receive the notice. See Chapter 20 of this title for current provisions relating to guardianship and conservatorship.

Former § 93-13-255 related to the appointment of a guardian ad litem before a hearing to determine the need for a conservator, and the personal examination of subject party by physicians. See Chapter 20 of this title for current provisions relating to guardianship and conservatorship.

Former § 93-13-257 provided which party was to be liable for costs. See Chapter 20 of this title for current provisions relating to guardianship and conservatorship.

Former § 93-13-259 provided the duties and powers of a conservator. See Chapter 20 of this title for current provisions relating to guardianship and conservatorship.

Former § 93-13-261 related to limitations on contractual powers and obligations of persons protected. See Chapter 20 of this title for current provisions relating to guardianship and conservatorship.

Former § 93-13-263 related to support for dependents of person for whom conservator has been appointed. See Chapter 20 of this title for current provisions relating to guardianship and conservatorship.

Former § 93-13-265 provided the procedure for restoration. See Chapter 20 of this title for current provisions relating to guardianship and conservatorship.

Former § 93-13-267 related to the resignation or termination of a conservator. See Chapter 20 of this title for current provisions relating to guardianship and conservatorship.

JOINDER OF PARTIES IN SUITS INVOLVING WARDS

§ 93-13-281. Repealed.

Repealed by Laws, 2019, ch. 463, § 19, eff from and after January 1, 2020.

§ 93-13-281. [Codes, 1942, § 399.5; Laws, 1972, ch. 408, § 11; Laws, 1978, ch. 456, § 1, eff from and after June 1, 1978.]

Editor's Note — Former § 93-13-281 related to joinder of parties in suits involving wards. See Chapter 20 of this title for current provisions relating to guardianship and conservatorship.

CHAPTER 14.

UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT

Article 1. General provisions. 93-14-101
Article 3. Transfer of Guardianship or Conservatorship. 93-14-301
Article 4. Registration and recognition of orders from other states [Repealed]. 93-14-401

ARTICLE 1.

GENERAL PROVISIONS.

Sec.
93-14-102. Definitions.

§ 93-14-102. Definitions.

In this chapter:

(1) "Adult" means an individual who has attained twenty-one (21) years of age.

(2) "Conservator" means a person appointed by the court to administer the property of an adult, including a person appointed under Article 4 of Title 93, Chapter 20, Mississippi Code of 1972.

(3) "Guardian" means a person appointed by the court to make decisions regarding the person of an adult, including a person appointed under Article 2 or 3 of Chapter 20, Title 93.

(4) "Guardianship order" means an order appointing a guardian.

(5) "Guardianship proceeding" means a judicial proceeding in which an order for the appointment of a guardian is sought or has been issued.

(6) "Incapacitated person" means an adult for whom a guardian has been appointed.

(7) "Party" means the respondent, petitioner, guardian, conservator, or any other person allowed by the court to participate in a guardianship or protective proceeding.

(8) "Person," except in the term incapacitated person or protected person, means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(9) "Protected person" means an adult for whom a protective order has been issued.

(10) "Protective order" means an order appointing a conservator or other order related to management of an adult's property.

(11) "Protective proceeding" means a judicial proceeding in which a protective order is sought or has been issued.

(12) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(13) "Respondent" means an adult for whom a protective order or the appointment of a guardian is sought.

(14) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.

HISTORY: Laws, 2014, ch. 384, § 1, eff from and after July 1, 2014; Laws, 2019, ch. 463, § 9, eff from and after January 1, 2020.

Amendment Notes — The 2019 amendment, effective January 1, 2020, substituted "twenty-one (21)" for "eighteen (18)" in (1); substituted "Article 4 of Title 93, Chapter 20, Mississippi Code of 1972" for "Section 93-13-251 et seq." in (2); and substituted "Article 2 or 3 of Chapter 20, Title 93" in (3).

ARTICLE 3.

TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP.

Sec.
93-14-302. Accepting guardianship or conservatorship transferred from another state.

§ 93-14-302. Accepting guardianship or conservatorship transferred from another state.

(a) To confirm transfer of a guardianship or conservatorship transferred to this state under provisions similar to Section 93-14-301, the guardian or conservator must petition the court in this state to accept the guardianship or conservatorship. The petition must include a certified copy of the other state's provisional order of transfer.

(b) Notice of a petition under subsection (a) must be given to those persons that would be entitled to notice if the petition were a petition for the appointment of a guardian or conservator or issuance of a protective order in both the transferring state and this state. The notice must be given in the same manner as notice is required to be given in this state.

(c) On the court's own motion or on request of the guardian or conservator, the incapacitated or protected person, or other person required to be notified of the proceeding, the court shall hold a hearing on a petition filed pursuant to subsection (a).

(d) The court shall issue an order provisionally granting a petition filed under subsection (a) unless:

(1) An objection is made and the objector establishes that transfer of the proceeding would be contrary to the interests of the incapacitated or protected person; or

(2) The guardian or conservator is ineligible for appointment in this state.

(e) The court shall issue a final order accepting the proceeding and appointing the guardian or conservator as guardian or conservator in this state upon its receipt from the court from which the proceeding is being transferred of a final order issued under provisions similar to Section 93-14-301 transferring the proceeding to this state.

(f) Not later than ninety (90) days after issuance of a final order accepting transfer of a guardianship or conservatorship, the court shall determine whether the guardianship or conservatorship needs to be modified to conform to the law of this state.

(g) In granting a petition under this section, the court shall recognize a guardianship or conservatorship order from the other state, including the determination of the incapacitated or protected person's incapacity and the appointment of the guardian or conservator.

(h) The denial by a court of this state of a petition to accept a guardianship or conservatorship transferred from another state does not affect the ability of the guardian or conservator to seek appointment as guardian or conservator in this state under Article 2, 3 or 4 of Title 93, Chapter 20, Mississippi Code of 1972, or under Section 35-5-1 et seq., if the court has jurisdiction to make an appointment other than by reason of the provisional order of transfer.

HISTORY: Laws, 2014, ch. 384, § 1, eff from and after July 1, 2014; Laws, 2019, ch. 463, § 10, eff from and after January 1, 2020.

Amendment Notes — The 2019 amendment, effective January 1, 2020, inserted "or conservator" following "appointment of a guardian" in (b); and substituted "Article 2, 3 or 4 of Title 93, Chapter 20, Mississippi Code of 1972, or under Section 35-5-1 et seq." for "Sections 93-13-251 through 93-13-267, Section 93-13-111, Sections 93-13-121 through 93-13-135 and Section 35-5-1 et seq." in (h).

ARTICLE 4.

REGISTRATION AND RECOGNITION OF ORDERS FROM OTHER STATES [REPEALED].

Sec.
93-14-401 through 93-14-403. Repealed.

§§ 93-14-401 through 93-14-403. Repealed.

Repealed by Laws, 2020, ch. 344, § 29, eff from and after passage (approved June 23, 2020).

§ 93-14-401. [Laws, 2014, ch. 384, § 1, eff from and after July 1, 2014.]
§ 93-14-402. [Laws, 2014, ch. 384, § 1, eff from and after July 1, 2014.]
§ 93-14-403. [Laws, 2014, ch. 384, § 1, eff from and after July 1, 2014.]

Editor's Notes — Former § 93-14-401 related to registration of guardianship orders.

Former § 93-14-402 related to registration of protective orders.
Former § 93-14-403 related to the effect of guardianship or protective orders.

CHAPTER 15.

MISSISSIPPI TERMINATION OF PARENTAL RIGHTS LAW

Sec.
93-15-105. Jurisdiction and venue.

§ 93-15-105. Jurisdiction and venue.

(1) The chancery court has original exclusive jurisdiction over all termination of parental rights proceedings except when a county court sitting as a youth court has acquired jurisdiction of a child in an abuse or neglect proceeding, then the county court shall have original exclusive jurisdiction to hear a petition for termination of parental rights against a parent of that child pursuant to the procedures of this chapter.

(2)(a) Venue in a county court sitting as a youth court for termination of parental rights proceedings shall be in the county in which the court has jurisdiction of the child in the abuse or neglect proceedings. Venue in chancery court for termination of parental rights proceedings shall be proper either in the county in which the defendant resides, the child resides or in the county where an agency or institution having custody of the child is located.

(b) Transfers of venue shall be governed by the Mississippi Rules of Civil Procedure.

HISTORY: Laws, 2016, ch. 431, § 4, eff from and after passage (approved Apr. 18, 2016); Laws, 2020, ch. 328, § 1, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment, in (1), substituted “when a county court, sitting” for “that a county court, when sitting” and “then the county court shall have original exclusive jurisdiction” for “has original exclusive jurisdiction,” and added “pursuant to the procedures of this chapter” at the end.

JUDICIAL DECISIONS

II. Under Former Law.

11. Jurisdiction.

Chancery court had jurisdiction under the Mississippi Termination of Parental Rights Law (MTPRL), Miss. Code Ann. § 93-15-101 et seq., to accept the voluntary releases of parental rights filed by a child’s natural parents and to order the child’s adoption because under the MTPRL a voluntary release of parental rights was a distinct and different mechanism for termination of parental rights than a petition filed against the parents. C.C.B. v. G.A.K., — So. 3d —, 2020 Miss. LEXIS 370 (Miss. Oct. 8, 2020).

OPINIONS OF THE ATTORNEY GENERAL

When the Department of Human Services (DHS) calls an expert witness in a parental termination case, the expense incurred would be the responsibility of the department; however, if an expert witness is sought on the motion of the guardian ad litem or the court, and the court so orders, any expert witness fee or expense would be borne by the county, not by DHS. Ward, May 4, 1999, A.G. Op. #99-0175.

§ 93-15-107. Commencement of proceedings; parties; summons.

JUDICIAL DECISIONS

I. Under Current Law.

1. Service by publication.

Father's motion for relief from the judgment terminating his parental rights was properly denied as the youth court did not lack personal jurisdiction over him because the mother properly served him by publication as she averred that the father had left the state and that, after a diligent search and inquiry, he could not be found; the publication summoned him to appear and defend against a petition filed against him; and he appeared at the June 27, 2017, hearing based on the publication. B.E.G. v. R.C., — So. 3d —, 2019 Miss. App. LEXIS 325 (Miss. Ct. App. July 16, 2019).

OPINIONS OF THE ATTORNEY GENERAL

When the Department of Human Services (DHS) calls an expert witness in a parental termination case, the expense incurred would be the responsibility of the department; however, if an expert witness is sought on the motion of the guardian ad litem or the court, and the court so orders, any expert witness fee or expense would be borne by the county, not by DHS. Ward, May 4, 1999, A.G. Op. #99-0175.

§ 93-15-109. Surrender of a child to the Department of Child Protection Services or a home.

JUDICIAL DECISIONS

1. In general.

Termination of parental rights and adoption was appropriate because there was serious neglect and abuse of children and a substantial erosion of the parent-child relationship as there was clear and convincing proof that the children were exposed to dangerous levels of methamphetamine while under the mother's care. Also, the father was inactive when the children were exposed to drugs while the father and the mother were separated, was unable to provide for the children with any stability, and lacked involvement in the children's care. J.P. v. L.S., 290 So. 3d 345, 2019 Miss. App. LEXIS 46 (Miss. Ct. App. 2019).

OPINIONS OF THE ATTORNEY GENERAL

There is no statutory requirement for the appointment of counsel to an indigent parent in a termination of parental rights proceeding. Castle, Sept. 23, 2005, A.G. Op. 05-0461.

§ 93-15-113. Conduct of hearing for involuntary termination of parental rights; counsel for parent.

JUDICIAL DECISIONS

1. Failure of parent to appear at termination hearing.

There was no need for the court to address the requirements of this statute when the father appeared at the June 27, 2017, hearing because that hearing was not the termination of parental rights hearing. B.E.G. v. R.C., — So. 3d —, 2019 Miss. App. LEXIS 325 (Miss. Ct. App. July 16, 2019).

§ 93-15-119. Involuntary termination in chancery court for reasons of abandonment, desertion, or parental unfitness to raise the child; standard of proof.

JUDICIAL DECISIONS

ANALYSIS

I. Under Current Law.—

II. Under Former Law.

11. Abandonment or neglect.

I. Under Current Law.—

There was substantial credible proof supporting the chancery court's decision to terminate a mother's parental rights because the case was replete with drug addiction, child neglect, crime, and past behavior demonstrating the mother's unfitness to raise her minor children; the mother conceded to using drugs and alcohol during her pregnancies and while breastfeeding her children, and she was charged and arrested for driving under the influence with her children in the vehicle. A.B. v. R.V., — So. 3d —, 2019 Miss. App. LEXIS 503 (Miss. Ct. App. Oct. 15, 2019).

II. Under Former Law.

11. Abandonment or neglect.

Because there was clear and convincing evidence that a father made no serious effort to see his children or to provide financial support for them from 2014 to 2017, the appellate court found no manifest error in the chancery court's determination that the father had engaged in conduct constituting abandonment and that it would not be in the children's best interest to be reunified with him. In re Harmon v. Ingle, — So. 3d —, 2019 Miss. App. LEXIS 199 (Miss. Ct. App. May 7, 2019).

§ 93-15-121. Grounds for termination.

JUDICIAL DECISIONS

I. Under Current Law.

There was sufficient evidence to support the termination of the parents' parental rights, including evidence that the mother had not secured suitable housing until the children had been removed from her custody for over three years, the parents failed to exercise reasonable visitation or communication with the children, and the parents' neglectful conduct had caused, at least in part, an extreme and deep-seated antipathy by the children toward their parents or some other substantial erosion of the parent-child relationship. R.B. v. Winston Cty. Dep't of Child Prot. Servs., 291 So. 3d 1116, 2019 Miss. App. LEXIS 614 (Miss. Ct. App. 2019).

There was substantial credible proof supporting the chancery court's decision by clear and convincing evidence that reunification between the mother and the minor children was not desirable toward obtaining a satisfactory permanency outcome because the mother suffered from severe drug and alcohol addiction and did not successfully complete drug or alcohol treatment; the mother had not paid child support, and she failed to communicate with her minor children for over two years. A.B. v. R.V., — So. 3d —, 2019 Miss. App. LEXIS 503 (Miss. Ct. App. Oct. 15, 2019).

CHAPTER 16.

GRANDPARENTS' VISITATION RIGHTS

Sec.
93-16-3. Who may petition for visitation rights; when; court in which to file petition.

§ 93-16-3. Who may petition for visitation rights; when; court in which to file petition.

(1) Whenever a court of this state enters a decree or order awarding custody of a minor child to one (1) of the parents of the child or terminating the parental rights of one (1) of the parents of a minor child, or whenever one (1) of the parents of a minor child dies, either parent of the child's parents may petition the court in which the decree or order was rendered or, in the case of the death of a parent, petition the chancery court in the county in which the child resides, and seek visitation rights with the child.

(2) Any grandparent who is not authorized to petition for visitation rights pursuant to subsection (1) of this section may petition the chancery court and seek visitation rights with his or her grandchild, and the court may grant visitation rights to the grandparent, provided the court finds:

(a) That the grandparent of the child had established a viable relationship with the child and the parent or custodian of the child unreasonably denied the grandparent visitation rights with the child; and

(b) That visitation rights of the grandparent with the child would be in the best interests of the child.

(3) For purposes of subsection (2) of this section, the term "viable relationship" means a relationship in which the grandparents or either of them have voluntarily and in good faith supported the child financially in whole or in part for a period of not less than six (6) months before filing any petition for visitation rights with the child, the grandparents have had frequent visitation including occasional overnight visitation with said child for a period of not less than one (1) year, or the child has been cared for by the grandparents or either of them over a significant period of time during the time the parent has been in jail or on military duty that necessitates the absence of the parent from the home.

(4) Any petition for visitation rights under subsection (2) of this section shall be filed in the county where an order of custody as to the child has previously been entered. If no custody order has been entered, then the grandparents' petition shall be filed in the county where the child resides or may be found. Upon a showing of financial hardship for the parents, the court

shall on motion of the parent or parents direct the grandparents to pay reasonable attorney's fees to the parent or parents at any time, including before a hearing, without regard to the outcome of the petition.

HISTORY: Laws, 1983, ch. 497, § 1; Laws, 1986, ch. 421, § 1; Laws, 1990, ch. 537, § 2; Laws, 1992, ch. 566, § 1; Laws, 2009, ch. 340, § 1, eff from and after July 1, 2009; Laws, 2019, ch. 404, § 1, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment, in (4), substituted the present last sentence for the former last two sentences, which read: "The court shall on motion of the parent or parents direct the grandparents to pay reasonable attorney's fees to the parent or parents in advance and prior to any hearing, except in cases in which the court finds that no financial hardship will be imposed upon the parents. The court may also direct the grandparents to pay reasonable attorney's fees to the parent or parents of the child and court costs regardless of the outcome of the petition."

JUDICIAL DECISIONS

ANALYSIS

2. Attorney fees.
5. Viable relationsihp.
6. Step-grandparents.

2. Attorney fees.

There was no abuse of discretion by the chancellor in awarding attorney's fees to parents in a grandmother's action seeking grandparent visitation with her granddaughter because the parents were financially stressed due to the grandparent-visitation action and resulting attorney's fees. Vermillion v. Perkett, 281 So. 3d 925, 2019 Miss. App. LEXIS 101 (Miss. Ct. App.), cert. denied, — So. 3d —, 2019 Miss. LEXIS 317 (Miss. 2019).

5. Viable relationsihp.

Chancellor did not err in granting parents a directed verdict because a grandmother failed to meet her burden of showing she had established a viable relationship with her grandchild; counsel for the grandmother admitted that they could not establish a viable relationship because a viable relationship was defined as six months, and it was impossible to comply. Vermillion v. Perkett, 281 So. 3d 925, 2019 Miss. App. LEXIS 101 (Miss. Ct. App.), cert. denied, — So. 3d —, 2019 Miss. LEXIS 317 (Miss. 2019).

Chancellor was not required to consider the best interest of the child before granting parents' motion for directed verdict in a grandmother's action seeking grandparent visitation with her granddaughter since the grandmother failed to prove that she established a viable relationship with the grandchild. Vermillion v. Perkett, 281 So. 3d 925, 2019 Miss. App. LEXIS 101 (Miss. Ct. App.), cert. denied, — So. 3d —, 2019 Miss. LEXIS 317 (Miss. 2019).

6. Step-grandparents.

Statute does not purport to authorize visitation awards to step-grandparents; because the party, as the child's step-grandparent, did not meet the criteria of a grandparent, the chancellor erred by granting the party grandparent visitation rights. Garner v. Garner, 283 So. 3d 120, 2019 Miss. LEXIS 357 (Miss. 2019).

Although the step-grandfather had no legal right to grandparent visitation, nothing in the statute prevented him from visiting or having a relationship with the child. Garner v. Garner, 283 So. 3d 120, 2019 Miss. LEXIS 357 (Miss. 2019).

§ 93-16-5. Parties to proceeding; discretion of court in granting, enforcing, modifying or terminating rights.

JUDICIAL DECISIONS

2. Illustrative cases.

Chancellor was not required to consider the best interest of the child before granting parents' motion for directed verdict in a grandmother's action seeking grandparent visitation with her granddaughter since the grandmother failed to prove that she established a viable relationship with the grandchild. Vermillion v. Perkett, 281 So. 3d 925, 2019 Miss. App. LEXIS 101 (Miss. Ct. App.), cert. denied, — So. 3d —, 2019 Miss. LEXIS 317 (Miss. 2019).

CHAPTER 17.

ADOPTION, CHANGE OF NAME, AND LEGITIMATION OF CHILDREN

Article 1. In General. 93-17-1
Article 3. Adoption Supplemental Benefits Law. 93-17-51

ARTICLE 1.

IN GENERAL.

Sec.
93-17-3. Jurisdiction for adoption or readoption proceedings; who may be adopted; who may adopt; venue of adoption proceedings; certificate of child's condition; change of name; adoption by couples of same gender prohibited; completion of home study; compliance with Interstate Compact for Placement of Children and Indian Child Welfare Act.

§ 93-17-3. Jurisdiction for adoption or readoption proceedings; who may be adopted; who may adopt; venue of adoption proceedings; certificate of child's condition; change of name; adoption by couples of same gender prohibited; completion of home study; compliance with Interstate Compact for Placement of Children and Indian Child Welfare Act.

(1) Except as otherwise provided in this section, a court of this state has jurisdiction over a proceeding for the adoption or readoption of a minor commenced under this chapter if:

(a) Immediately before commencement of the proceeding, the minor lived in this state with a parent, a guardian, a prospective adoptive parent or another person acting as parent, for at least six (6) consecutive months, excluding periods of temporary absence, or, in the case of a minor under six (6) months of age, lived in this state from soon after birth with any of those individuals and there is available in this state substantial evidence concerning the minor's present or future care;

(b) Immediately before commencement of the proceeding, the prospective adoptive parent lived in this state for at least six (6) consecutive months, excluding periods of temporary absence, and there is available in this state substantial evidence concerning the minor's present or future care;

(c) The agency that placed the minor for adoption is licensed in this state and it is in the best interest of the minor that a court of this state assume jurisdiction because:

(i) The minor and the minor's parents, or the minor and the prospective adoptive parent, have a significant connection with this state; and

(ii) There is available in this state substantial evidence concerning the minor's present or future care;

(d) The minor and the prospective adoptive parent or parents are physically present in this state and the minor has been abandoned or it is necessary in an emergency to protect the minor because the minor has been subjected to or threatened with mistreatment or abuse or is otherwise neglected, and the prospective adoptive parent or parents, if not residing in Mississippi, have completed and provided the court with a satisfactory Interstate Compact for Placement of Children (ICPC) home study and accompanying forms;

(e) It appears that no other state would have jurisdiction under prerequisites substantially in accordance with paragraphs (a) through (d), or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to hear a petition for adoption of the minor, and it is in the best interest of the minor that a court of this state assume jurisdiction; or

(f) The child has been adopted in a foreign country, the agency that placed the minor for adoption is licensed in this state, and it is in the best interest of the child to be readopted in a court of this state having jurisdiction.

(2) A court of this state may not exercise jurisdiction over a proceeding for adoption of a minor if, at the time the petition for adoption is filed, a proceeding concerning the custody or adoption of the minor is pending in a court of another state exercising jurisdiction substantially in conformity with the Uniform Child Custody Jurisdiction Act or this section unless the proceeding is stayed by the court of the other state.

(3) If a court of another state has issued a decree or order concerning the custody of a minor who may be the subject of a proceeding for adoption in this state, a court of this state may not exercise jurisdiction over a proceeding for adoption of the minor unless:

(a) The court of this state finds that the court of the state which issued the decree or order:

(i) Does not have continuing jurisdiction to modify the decree or order under jurisdictional prerequisites substantially in accordance with the Uniform Child Custody Jurisdiction Act or has declined to assume jurisdiction to modify the decree or order; or

(ii) Does not have jurisdiction over a proceeding for adoption substantially in conformity with subsection (1)(a) through (d) or has declined to assume jurisdiction over a proceeding for adoption; and

(b) The court of this state has jurisdiction over the proceeding.

(4) Any person may be adopted in accordance with the provisions of this chapter in term time or in vacation by an unmarried adult, by a married person whose spouse joins in the petition, by a married person whose spouse does not join in the petition because such spouse does not cohabit or reside with the petitioning spouse, and in any circumstances determined by the court that the adoption is in the best interest of the child. Only the consenting adult will be a legal parent of the child. The adoption shall be by sworn petition filed in the chancery court of the county in which the adopting petitioner or petitioners reside or in which the child to be adopted resides or was born, or was found when it was abandoned or deserted, or in which the home is located to which the child has been surrendered by a person authorized to so do. The petition shall be accompanied by a doctor's or nurse practitioner's certificate showing the physical and mental condition of the child to be adopted and a sworn statement of all property, if any, owned by the child. In addition, the petition shall be accompanied by affidavits of the petitioner or petitioners stating the amount of the service fees charged by any adoption agencies or adoption facilitators used by the petitioner or petitioners and any other expenses paid by the petitioner or petitioners in the adoption process as of the time of filing the petition. If the doctor's or nurse practitioner's certificate indicates any abnormal mental or physical condition or defect, the condition or defect shall not, in the discretion of the chancellor, bar the adoption of the child if the adopting parent or parents file an affidavit stating full and complete knowledge of the condition or defect and stating a desire to adopt the child, notwithstanding the condition or defect. The court shall have the power to change the name of the child as a part of the adoption proceedings. The word "child" in this section shall be construed to refer to the person to be adopted, though an adult.

(5) Adoption by couples of the same gender is prohibited.

(6) No person may be placed in the home of or adopted by the prospective adopting parties before a court-ordered or voluntary home study is satisfactorily completed by a licensed adoption agency, a licensed, experienced social worker approved by the chancery court, a court-appointed guardian ad litem that has knowledge or training in conducting home studies if so directed by the court, or by the Department of Human Services on the prospective adoptive parties if required by Section 93-17-11.

(7) No person may be adopted by a person or persons who reside outside the State of Mississippi unless the provisions of the Interstate Compact for Placement of Children (Section 43-18-1 et seq.) have been complied with. In such cases Forms 100A, 100B (if applicable) and evidence of Interstate Compact for Placement of Children approval shall be added to the permanent adoption record file within one (1) month of the placement, and a minimum of two (2) post-placement reports conducted by a licensed child-placing agency shall be provided to the Mississippi Department of Child Protection Services Interstate Compact for Placement of Children office.

(8) No person may be adopted unless the provisions of the Indian Child Welfare Act (ICWA) have been complied with, if applicable. When applicable, proof of compliance shall be included in the court adoption file prior to finalization of the adoption. If not applicable, a written statement or paragraph in the petition for adoption shall be included in the adoption petition stating that the provisions of ICWA do not apply before finalization.

(9) The readoption of a child who has automatically acquired United States citizenship following an adoption in a foreign country and who possesses a Certificate of Citizenship in accordance with the Child Citizenship Act, CAA, Public Law 106-395, may be given full force and effect in a readoption proceeding conducted by a court of competent jurisdiction in this state by compliance with the Mississippi Registration of Foreign Adoptions Act, Article 9 of this chapter.

HISTORY: Codes, 1942, § 1269-02; Laws, 1955, Ex. ch. 34, § 2; Laws, 1973, ch. 361, § 1; Laws, 1994, ch. 437, § 1; Laws, 2000, ch. 535, § 1; Laws, 2004, ch. 527, § 1; Laws, 2006, ch. 382, § 1; Laws, 2007, ch. 496, § 4; Laws, 2012, ch. 556, § 1; Laws, 2014, ch. 385, § 1, eff from and after July 1, 2014; Laws, 2020, ch. 461, § 1, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment, in (1)(d), inserted "or parents" and added "and the prospective adoptive parent…home study and accompanying forms" at the end; in (4), added "by a married person whose spouse does not join…best interest of the child" in the first sentence, and added the second sentence; in (6), inserted "a court-appointed guardian…if so directed by the court"; and in (7), substituted "Mississippi Department of Child Protection Services" for "Mississippi Department of Human Services."

§ 93-17-7. Parental objection; causes for termination of parental rights.

JUDICIAL DECISIONS

ANALYSIS

I. UNDER CURRENT LAW.

1. In general.
6. Grounds for termination — Substantial erosion of parent and child.

I. UNDER CURRENT LAW.

1. In general.

Termination of parental rights and adoption were in children's best interest because the parents were unfit to rear and train their children as there was serious neglect and abuse by the parents. Moreover, the children were doing well in the care and custody of a cousin's family which wanted to adopt the children, deep bonds had developed among the children and the cousin's family, the children were receiving needed therapy, and a family therapist expressed concerns over the children reuniting with the parents. J.P. v. L.S., 290 So. 3d 345, 2019 Miss. App. LEXIS 46 (Miss. Ct. App. 2019).

6. Grounds for termination — Substantial erosion of parent and child.

Termination of parental rights and adoption was appropriate because children were exposed to dangerous levels of methamphetamine while under the mother's care and a substantial erosion of the parent-child relationship was caused by the mother's serious neglect and abuse. There was serious neglect and abuse by the father as the father was inactive when the children were being exposed to drugs while the father and the mother were separated, was unable to provide for the children with any stability, and lacked involvement in the children's care. J.P. v. L.S., 290 So. 3d 345, 2019 Miss. App. LEXIS 46 (Miss. Ct. App. 2019).

§ 93-17-13. Final decree and effect thereof; completion of home study before final decree entered.

JUDICIAL DECISIONS

I. UNDER CURRENT LAW.

2. Application in particular circumstances.

Chancery court erred in a divorce by failing to address child support in relation to the wife's child from a previous relationship when the court awarded custody of the child to the wife because the husband's duties and obligations to support the child vested upon the husband's adoption of the child as the husband's child. Therefore, remand was necessary for the chancery court to determine whether child support for the child was warranted, and if so, in what amount. Hackler v. Hackler, 296 So. 3d 773, 2020 Miss. App. LEXIS 313 (Miss. Ct. App. 2020).

Termination of a deceased father's parental rights to a natural son and the son's adoption in Michigan did not bar a chancery court from naming the son as the father's sole wrongful death beneficiary because, under governing Mississippi law, a natural son could nonetheless be so designated, despite contrary Michigan statutes. Alexander v. DeForest (In re Determination of Wrongful Death Heirs of Underhill), 262 So. 3d 1111, 2019 Miss. LEXIS 54 (Miss. 2019).

ARTICLE 3.

ADOPTION SUPPLEMENTAL BENEFITS LAW.

Sec.

93-17-55. Definitions.
93-17-67. Continuation of benefits.
93-17-69. Financial support for nonrecurring adoption expenses under certain circumstances.

§ 93-17-55. Definitions.

As used in Sections 93-17-51 through 93-17-67, the word "child" shall mean a minor as defined by Mississippi law who is:

(a) A dependent of a public or voluntary licensed child-placing agency, eligible for Supplemental Security Income prior to the finalization of the adoption, one (1) for whom supplemental benefits were paid pursuant to the aforementioned sections in a previous adoption that was dissolved or wherein the adoptive parents died, or is the child of a minor parent in foster care for whom the board payment was increased on account of the birth;

(b) Legally eligible for adoption; and

(c) In special circumstances whether:

(i) Because he has established significant emotional ties with prospective adoptive parents while in their care as a foster child and it is deemed in the best interest of the child by the agency to be adopted by the foster parents, or

(ii) Because he is not likely to be adopted because of one or more of the following special needs: 1. severe physical or mental disability, 2. severe emotional disturbance, 3. recognized high risk of physical or mental disease, 4. older than two (2) years of age, 5. a sibling group to be adopted together, or 6. any combination of these special needs.

HISTORY: Laws, 1979, ch. 510, § 3; Laws, 2007, ch. 337, § 1, eff from and after July 1, 2007; Laws, 2019, ch. 464, § 13, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment substituted "Legally eligible" for "Legally free" in (b); and in (c)(ii), substituted "special needs" for "handicaps," deleted "or" preceding "4.", added 4. and 5. and redesignated 4. as 6.

§ 93-17-67. Continuation of benefits.

(1) If the adoptive parents of a child eligible for adoption supplemental benefits sign an adoption assistance agreement with the Department of Child Protection Services, then, whether or not they accept such benefits, Medicaid coverage shall be provided for the child under the agency's medical payment program from and after the commencement date established pursuant to Section 93-17-61 until the child's eighteenth birthday, provided that federal matching funds are available for such payment.

(2) Any child who is adopted in this state through a state-supported adoption agency and who immediately prior to such adoption was receiving Medicaid benefits because of a severe physical or mental special need shall continue to receive such coverage benefits after adoption age eighteen (18), and such benefits shall be payable as provided under the agency's medical payment program for so long as the State Department of Child Protection Services determines that the treatment or rehabilitation for which payment is being made is in the best interest of the child concerned, but not past the age of twenty-one (21) years, provided that federal matching funds are available for such payment and that any state funds used for such payment shall have been appropriated specifically for such purpose.

(3) Any child who is adopted in this state through a state-supported adoption agency and who immediately before the adoption was receiving Medicaid benefits because of a determination of special needs under Section 93-17-55(c)(ii) shall continue to receive the Medicaid benefits after adoption until the child reaches the age of eighteen (18) if the child is still in high school as verified by proof of enrollment and an anticipated graduation date letter from the school. If coverage is extended because the child remains enrolled in high school, the coverage shall terminate at graduation or age twenty-one (21), whichever occurs first.

(4) If permitted by federal law without any loss to the state of federal matching funds, the financial resources of the adopting parents shall not be a factor in such determination except that payments on behalf of a child of any age may be adjusted when insurance benefits available to the adopting parents

would pay all or part of such payments being made by the state, or if medical or rehabilitation services are otherwise available without cost to the adopting parents. The amount of financial assistance given shall not exceed the amount that the Medicaid Commission would be required to pay for the same medical treatment or rehabilitation.

(5) The receipt of Medicaid benefits by an adopted child under Sections 93-17-51 through 93-17-67 shall not qualify the adopting parents for Medicaid eligibility, unless either parent is otherwise eligible under Section 43-13-115, Mississippi Code of 1972.

HISTORY: Laws, 1979, ch. 510, § 9; Laws, 2008, ch. 541, § 2, eff from and after July 1, 2008; Laws, 2019, ch. 464, § 14, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment substituted "Department of Child Protection Services" for "Department of Human Services" in (1) and (2); substituted "physical or mental special need" for "physical of mental handicap" in (2); and added (3), and redesignated former (3) and (4) as (4) and (5).

§ 93-17-69. Financial support for nonrecurring adoption expenses under certain circumstances.

The Department of Child Protection Services is authorized to provide financial support for nonrecurring adoption expenses to any person proposing to adopt a child who is a dependent of a state child-placing agency and who is in special circumstances as defined in paragraph (c) of Section 93-17-55.

HISTORY: Laws, 1987, ch. 363, eff from and after July 1, 1987; Laws, 2019, ch. 464, § 15, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment rewrote the section, which read: "Any person proposing to adopt a child who is a dependent of a state child-placing agency and who is in special circumstances as defined in paragraph (c) of Section 93-17-55 shall be represented by the State Department of Public Welfare when requested by the adopting parent in all phases of the adoption proceeding. State child-placing agencies shall advise prospective adopting parents of their right under this section to be represented in adoption proceedings. The fees for filing the petition for adoption and preparing a revised birth certificate, any court costs taxed against the petitioner and any other actual payments made by the Department of Public Welfare to third parties as required to complete the adoption proceeding, shall be paid by the adopting parent."

CHAPTER 19.

REMOVAL OF DISABILITY OF MINORITY

§ 93-19-1. Removal of disability as to real estate.

OPINIONS OF THE ATTORNEY GENERAL

A lease is enforceable against persons twenty-one years of age or older and married persons eighteen years of age or older for property to be occupied by them as a residence. A lease is also enforceable against a minor tenant who has had his or her disability removed for that purpose by an order entered by the appropriate chancery court. McArty, December 20, 1995, A.G. Op. #95-0763.

§ 93-19-13. Persons eighteen years of age or older competent to contract in matters affecting personal property.

OPINIONS OF THE ATTORNEY GENERAL

All persons 18 years of age or older, if not otherwise disqualified, or prohibited by law, shall have the capacity to enter into binding contractual relationships affecting personal property. A person must be 21 years of age or older to enter into a binding contract concerning real property, except a married minor 18 years of age or older may purchase or sell homestead property. Walters, May 10, 2005, A.G. Op. 05-0141.

CHAPTER 20.

GUARDIANSHIP AND CONSERVATORSHIP

Article 1. General Provisions. 93-20-101
Article 2. Guardianship of Minor. 93-20-201
Article 3. Guardianship of Adult. 93-20-301
Article 4. Conservatorship. 93-20-401

ARTICLE 1

GENERAL PROVISIONS

Sec.
93-20-101. Short title.
93-20-102. Definitions.
93-20-103. Supplemental principles of law and equity applicable.
93-20-104. Subject-matter jurisdiction.
93-20-105. Transfer of proceeding.
93-20-106. Venue.
93-20-107. Practice in court.
93-20-108. Letters of guardianship or conservatorship.
93-20-109. Effect of acceptance of appointment.
93-20-110. Co-guardian; co-conservator.
93-20-111. Judicial appointment of successor guardian or successor conservator.
93-20-112. Effect of death, removal, or resignation of guardian or conservator.
93-20-113. Notice of hearing generally.
93-20-114. Waiver of notice.
93-20-115. Guardian ad litem.
93-20-116. Request for notice.
93-20-117. Disclosure of bankruptcy or criminal history.
93-20-118. Compensation and expenses; in general.
93-20-119. Compensation of guardian or conservator.
93-20-120. Liability of guardian or conservator for act of ward.
93-20-121. Petition after appointment for instruction or ratification.
93-20-122. Third-party acceptance of authority of guardian or conservator.
93-20-123. Temporary substitute guardian or conservator.
93-20-124. Registration of order; effect.

Sec.
93-20-125. Transition provisions.

§ 93-20-101 Short title.

This chapter may be cited as the Mississippi Guardianship and Conservatorship Act.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020.

§ 93-20-102. Definitions.

In this chapter:

(a) "Adult" means an individual at least twenty-one (21) years of age or an emancipated individual under twenty-one (21) years of age.

(b) "Claim" includes a claim against an individual or conservatorship estate, whether arising in contract, tort, or otherwise.

(c) "Conservator" means a person appointed by a court to make decisions with respect to the property or financial affairs of a ward. The term includes a co-conservator.

(d) "Conservatorship estate" means the property subject to conservatorship under this chapter.

(e) "Full conservatorship" means a conservatorship that grants the conservator all powers available under this chapter.

(f) "Full guardianship" means a guardianship that grants the guardian all powers available under this chapter.

(g) "Guardian" means a person appointed by the court to make decisions with respect to the personal affairs of the ward. The term includes a co-guardian but does not include a guardian ad litem.

(h) "Guardian ad litem" means a qualified person appointed by the court to inform the court about the ward, to protect the best interests of the ward, and to make recommendations to the court in the best interests of the ward.

(i) "Less restrictive alternative" means an approach to meeting an individual's needs which restricts fewer rights of the individual than would the appointment of a guardian or conservator in the discretion of the court.

(j) "Letters of guardianship or conservatorship" means a record issued by a court certifying a guardian's or conservator's authority to act.

(k) "Limited conservatorship" means a conservatorship that grants the conservator less than all powers available under this chapter, grants powers over only certain property, or otherwise restricts the powers of the conservator.

(*l*) "Limited guardianship" means a guardianship that grants the guardian less than all powers available under this chapter or otherwise restricts the powers of the guardian.

(m) "Minor" means an unemancipated individual under twenty-one (21) years of age.

(n) "Notice" means any notice as provided by Rule 5 of the Mississippi Rules of Civil Procedure.

(o) "Parent" does not include an individual whose parental rights have been terminated.

(p) "Person" means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(q) "Property" includes tangible and intangible property.

(r) "Record," used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(s) "Respondent" means an individual for whom appointment of a guardian or conservator is sought.

(t) "Sign" means, with present intent to authenticate or adopt a record:

(i) To execute or adopt a tangible symbol; or

(ii) To attach to or logically associate with the record an electronic symbol, sound, or process.

(u) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes a federally recognized Indian tribe.

(v) "Summons" means any properly issued summons as provided by the Mississippi Rules of Civil Procedure.

(w) "Ward" means an adult or minor for whom a guardian or conservator has been appointed under this chapter.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020; Laws, 2020, ch. 344, § 1, eff from and after passage (approved June 23, 2020).

Amendment Notes — The 2020 amendment, effective June 23, 2020, added (n) and (v); and redesignated former (n) through (t) as (o) through (u) and former (u) as (w).

§ 93-20-103. Supplemental principles of law and equity applicable.

Unless displaced by a particular provision of this chapter, the principles of law and equity supplement its provisions.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020.

§ 93-20-104. Subject-matter jurisdiction.

(1) Except to the extent jurisdiction is precluded by the Uniform Child Custody Jurisdiction and Enforcement Act (Title 93, Chapter 27, Mississippi Code of 1972) and the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (Title 93, Chapter, 14, Mississippi Code of 1972), the chancery court has jurisdiction over a guardianship or conservatorship for a respondent domiciled or present in this state or having property in this state.

(2) After a petition is filed in a proceeding for a guardianship or conservatorship and until termination of the proceeding, the court in which the petition is filed has:

(a) Exclusive jurisdiction to determine the need for the guardianship or conservatorship;

(b) Exclusive jurisdiction to determine how property of the respondent must be managed, expended, or distributed to or for the use of the respondent, an individual who is dependent in fact on the respondent, or other claimant;

(c) Nonexclusive jurisdiction to determine the validity of a claim against the respondent or property of the respondent or a question of title concerning the property; and

(d) If a guardian or conservator is appointed, exclusive jurisdiction over issues related to administration of the guardianship or conservatorship.

(3) A court that appoints a guardian or conservator has exclusive and continuing jurisdiction over the proceeding until the court terminates the proceeding.

(4) This chapter does not apply to a durable legal relative guardianship to facilitate child placement that may be created by a youth court under Section 43-21-609.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020; Laws, 2020, ch. 344, § 2, eff from and after passage (approved June 23, 2020).

Amendment Notes — The 2020 amendment, effective June 23, 2020, in (1), inserted "and the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (Title 93, Chapter, 14, Mississippi Code of 1972)"; in (2), substituted "a petition is filed" for "notice is given"; and added (4).

§ 93-20-105. Transfer of proceeding.

(1) This section does not apply to a guardianship or conservatorship for an adult that is subject to the transfer provisions of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (Title 93, Chapter 14, Mississippi Code of 1972).

(2) After appointment of a guardian or conservator, the court that made the appointment may transfer the proceeding to a court in another county in this state or another state if transfer is in the best interest of the ward, a final settlement of the conservatorship accounts is made, and the guardian or conservator qualifies as such in the county or state to which the proceeding is being removed.

(3) If a proceeding for a guardianship or conservatorship is pending in another state or a foreign country and a petition for guardianship or conservatorship for the same respondent is filed in a court in this state, the court must notify the court in the other state or foreign country and, after consultation with that court, assume or decline jurisdiction, whichever is in the best interest of the respondent.

(4) A guardian or conservator appointed in another state or country may petition the court for appointment as a guardian or conservator in this state for

the same individual if jurisdiction in this state is or will be established. The appointment may be made on proof as outlined in Section 93-20-124.

(5) Summons giving notice of hearing on a petition under subsection (4), together with a copy of the petition, must be given to the respondent, if the respondent is at least fourteen (14) years of age at the time of the hearing, and to the persons that would be entitled to summons or notice if the procedures for appointment of a guardian or conservator under this chapter were applicable. The court shall make the appointment unless it determines the appointment would not be in the best interest of the respondent.

(6) Not later than fourteen (14) days after appointment under subsection (5), the guardian or conservator must give a copy of the order of appointment to the ward, if the ward is at least fourteen (14) years of age, and to all persons given notice of the hearing on the petition.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020; Laws, 2020, ch. 344, § 3, eff from and after passage (approved June 23, 2020).

Amendment Notes — The 2020 amendment, effective June 23, 2020, in (5), added "Summons giving" and made a related changed, and inserted "summons or."

§ 93-20-106. Venue.

(1) Venue for a guardianship proceeding for a minor is in:

(a) The county in which the minor resides or is present at the time the proceeding commences; or

(b) The county in which another proceeding concerning the custody or parental rights of the minor is pending.

(2) Venue for a guardianship proceeding for an adult is in:

(a) The county in which the respondent resides;

(b) If the respondent has been admitted to an institution by court order, the county in which the court is located; or

(c) If the proceeding is for appointment of an emergency guardian for an adult, the county in which the respondent is present.

(3) Venue for a conservatorship proceeding is in:

(a) The county in which the respondent resides, whether or not a guardian has been appointed in another county or other jurisdiction; or

(b) If the respondent does not reside in this state, in any county in which property of the respondent is located.

(4) If proceedings under this chapter are brought in more than one (1) county, the court of the county in which the first proceeding is brought has the exclusive right to proceed unless the court determines venue is properly in another court or that the interest of justice otherwise requires transfer of the proceeding.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020.

§ 93-20-107. Practice in court.

(1) Except as otherwise provided in this chapter, the Mississippi Rules of

Evidence and Mississippi Rules of Civil Procedure, including rules concerning appellate review, govern a proceeding under this chapter.

(2) Proceedings for a guardianship and conservatorship for the same individual may be commenced in a single proceeding, and if separate proceedings are commenced or pending in the same court, the proceedings may be consolidated.

(3) If the court finds that a provision of this chapter conflicts with a provision of Title 35, Chapter 5, Mississippi Code of 1972 (Uniform Veterans' Guardianship Law), the court must resolve the conflict in the best interest of the ward.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020; Laws, 2020, ch. 344, § 4, eff from and after passage (approved June 23, 2020).

Amendment Notes — The 2020 amendment, effective June 23, 2020, rewrote (2), which read: "If proceedings for a guardianship or conservatorship for the same individual are commenced or pending in the same court, the proceedings may be consolidated"; and added (3).

§ 93-20-108. Letters of guardianship or conservatorship.

(1) At or before the time of appointment, the guardian or conservator must take and subscribe an oath faithfully to discharge the duties of guardian or conservator of the ward according to law.

(2) The clerk must issue letters of guardianship to a guardian who takes the proper oath, posts bond if required, and submits a certificate of attorney and certificate of fiduciary, unless waived by the court.

(3) The clerk must issue letters of conservatorship to a conservator who takes the proper oath, posts bond if required, and submits a certificate of attorney and certificate of fiduciary, unless waived by the court or unless the conservator complies with another asset-protection arrangement required by the court.

(4) The court in its initial order of appointment or at any subsequent time may limit the powers conferred on a guardian or conservator. The court shall direct the clerk to issue new letters of guardianship or conservatorship that reflect the limitation. The court shall direct the clerk to give notice of the limitation by service of a copy of the court's order with proof of service on the guardian or conservator, the ward, and any other person the court determines.

(5) Limitations on the powers of a guardian or conservator or on the property subject to conservatorship must be stated in the letters of guardianship or conservatorship.

(6) Letters of guardianship and conservatorship may be combined in one (1) document if the guardian and conservator are the same person.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020; Laws, 2020, ch. 344, § 5, eff from and after passage (approved June 23, 2020).

Amendment Notes — The 2020 amendment, effective June 23, 2020, added (1) and redesignated former (1) through (4) as (2) through (5); in (4), inserted "with proof of service"; and added (6).

§ 93-20-109. Effect of acceptance of appointment.

By accepting appointment, a guardian or conservator submits to the personal jurisdiction of the court in this state in any proceeding relating to the guardianship or conservatorship.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020.

§ 93-20-110. Co-guardian; co-conservator.

When the court deems appropriate, the co-guardian or co-conservator must comply with Section 93-20-108.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020.

§ 93-20-111. Judicial appointment of successor guardian or successor conservator.

(1) The court at any time may appoint a successor guardian or successor conservator to serve immediately as ordered by the court.

(2) A person entitled under Section 93-20-202 or 93-20-302 to petition the court to appoint a guardian may petition the court to appoint a successor guardian. A person entitled under Section 93-20-402 to petition the court to appoint a conservator may petition the court to appoint a successor conservator.

(3) A successor guardian or successor conservator appointed to serve may act as guardian or conservator upon compliance with Section 93-20-108.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020.

§ 93-20-112. Effect of death, removal, or resignation of guardian or conservator.

(1) The appointment of a guardian or conservator terminates on the death or removal of the guardian or conservator, or when the court approves a resignation of the guardian or conservator under subsection (2).

(2) A guardian or conservator must petition the court to resign. The petition may include a request that the court appoint a successor. Resignation of a guardian or conservator is effective on the date the resignation is approved by the court.

(3) Death, removal, or resignation of a guardian or conservator does not affect liability for a previous act or the obligation to account for:

(a) An action taken on behalf of the ward; or

(b) The ward's funds or other property.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020.

§ 93-20-113. Notice of hearing generally.

(1) Except as otherwise provided in Section 93-20-203, 93-20-303 or

93-20-403, if notice of a hearing under this chapter is required, the movant must give notice under Rule 5 of the Mississippi Rules of Civil Procedure of the date, time, and place of the hearing to the person to be notified unless otherwise ordered by the court for good cause shown.

(2) Proof of notice given of a hearing under this chapter must be made before or at the hearing and filed in the proceeding.

(3) Notice given of a hearing under this chapter must be in at least sixteen-point font, in plain language, and, to the extent feasible, in a language in which the person to be notified is proficient.

(4) Any person interested in the ward's welfare may file a motion to intervene as provided by Rule 24 of the Mississippi Rules of Civil Procedure.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020; Laws, 2020, ch. 344, § 6, eff from and after passage (approved June 23, 2020).

Amendment Notes — The 2020 amendment, effective June 23, 2020, in (1), deleted "(3)" following "93-20-303" and 93-20-403," inserted "under Rule 5 of the Mississippi Rules of Civil Procedure," and deleted the former last sentence, which read: "Except as otherwise provided in this chapter, notice must be given in compliance with Rule 81 of the Mississippi Rules of Civil Procedure"; and inserted "given" in (2) and (3).

§ 93-20-114. Waiver of notice.

Except as otherwise provided in this chapter, a person may waive notice under this chapter in a record signed by the person or person's attorney and filed in the proceeding. However, a respondent or ward may not waive notice under this chapter.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020.

§ 93-20-115. Guardian ad litem.

The court at any time may appoint a guardian ad litem for an individual. If no conflict of interest exists, a guardian ad litem may be appointed to represent multiple individuals or interests. The guardian ad litem may not be the same individual as the attorney representing the respondent. The court shall state the duties of the guardian ad litem and the reasons for the appointment.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020.

§ 93-20-116. Request for notice.

(1) A person may file with the court a request for notice under this chapter if the person is:

(a) Not otherwise entitled to notice under Section 93-20-203, Section 93-20-303 or Section 93-20-403; and

(b) Interested in the welfare of a respondent or ward.

(2) A request under subsection (1) must include a statement showing the

interest of the person making the request and the address of the person or an attorney for the person to whom notice is to be given.

(3) If the court approves a request under subsection (1), the court must give notice of the approval to the guardian or conservator, if one has been appointed, or to the respondent if no guardian or conservator has been appointed.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020; Laws, 2020, ch. 344, § 7, eff from and after passage (approved June 23, 2020).

Amendment Notes — The 2020 amendment, effective June 23, 2020, in (1)(a), deleted "(3)" following "93-20-303" and "93-20-403."

§ 93-20-117. Disclosure of bankruptcy or criminal history.

Before accepting appointment as a guardian or conservator, a person must disclose to the court whether the person:

(a) Is or has been a debtor in a bankruptcy, insolvency, or receivership proceeding; or

(b) Has been convicted of:

(i) A felony;

(ii) A crime involving dishonesty, neglect, violence, or use of physical force; or

(iii) Other crime relevant to the functions the person would assume as guardian or conservator.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020.

§ 93-20-118. Compensation and expenses; in general.

(1) An attorney for a respondent in a proceeding under this chapter may be awarded reasonable compensation for services and reasonable expenses in the discretion of the court.

(2) An attorney or other person whose services resulted in an order beneficial to a ward may be awarded reasonable compensation for services and reasonable expenses in the discretion of the court.

(3) The court must approve compensation and expenses payable under this section before payment. Approval is not required before a service is provided or an expense is incurred.

(4) If the court dismisses a petition under this chapter and determines the petition was filed in bad faith, the court may assess any costs and attorney's fees the court deems appropriate.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020; Laws, 2020, ch. 344, § 8, eff from and after passage (approved June 23, 2020).

Amendment Notes — The 2020 amendment, effective June 23, 2020, inserted "and attorney's fees" in (4).

§ 93-20-119. Compensation of guardian or conservator.

(1) Subject to court approval, a guardian may be awarded reasonable compensation for services as guardian and to reimbursement for room, board, clothing, and other appropriate expenses advanced for the benefit of the ward. If a conservator other than the guardian or a person affiliated with the guardian is appointed for the ward, reasonable compensation and reimbursement to the guardian may be approved and paid by the conservator in the discretion of the court.

(2) Subject to court approval, a conservator may be awarded reasonable compensation for services and reimbursement for appropriate expenses from the property of the ward in the discretion of the court.

(3) In determining reasonable compensation for a guardian or conservator, the court shall consider:

(a) The necessity and quality of the services provided;

(b) The experience, training, professional standing, and skills of the guardian or conservator;

(c) The difficulty of the services performed, including the degree of skill and care required;

(d) The conditions and circumstances under which a service was performed, including whether the service was provided outside regular business hours or under dangerous or extraordinary conditions;

(e) The effect of the services on the ward;

(f) The extent to which the services provided were or were not consistent with the guardian's plan under Section 93-20-315 or conservator's plan under Section 93-20-419; and

(g) The fees customarily paid to a person that performs a like service in the community.

(4) A guardian or conservator need not use personal funds of the guardian or conservator for the expenses of the ward.

(5) If a ward seeks to modify or terminate the guardianship or conservatorship or remove the guardian or conservator, the court may order compensation to the guardian or conservator for time spent opposing modification, termination, or removal only to the extent the court determines the opposition was reasonably necessary to protect the interest of the ward.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020.

§ 93-20-120. Liability of guardian or conservator for act of ward.

A guardian or conservator is not personally liable to another person solely because of the guardianship or conservatorship for an act or omission of the ward.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020.

§ 93-20-121. Petition after appointment for instruction or ratification.

(1) A guardian or conservator may petition the court for instruction concerning fiduciary responsibility or ratification of a particular act related to the guardianship or conservatorship.

(2) On notice and hearing on a petition under subsection (1), the court may give an instruction and issue an appropriate order.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020.

§ 93-20-122. Third-party acceptance of authority of guardian or conservator.

(1) A person may choose to not recognize the authority of a guardian or conservator to act on behalf of a ward if:

(a) The person has actual knowledge or a reasonable belief that the letters of guardianship or conservatorship are invalid or the conservator or guardian is exceeding or improperly exercising authority granted by the court; or

(b) The person has actual knowledge that the ward is subject to physical or financial abuse, neglect, exploitation, or abandonment by the guardian or conservator or a person acting for or with the guardian or conservator.

(2) A person may refuse to recognize the authority of a guardian or conservator to act on behalf of a ward if:

(a) The guardian's or conservator's proposed action would be inconsistent with this chapter; or

(b) The person makes, or has actual knowledge that another person has made, a report to a government agency providing protective services to adults or children stating a good-faith belief that the ward is subject to physical or financial abuse, neglect, exploitation, or abandonment by the guardian or conservator or a person acting for or with the guardian or conservator.

(3) A person that refuses to accept the authority of a guardian or conservator in accordance with subsection (2) may report the refusal and the reason for refusal to the court. The court on receiving the report shall consider whether removal of the guardian or conservator or other action is appropriate.

(4) A guardian or conservator may petition the court to require a third party to accept a decision made by the guardian or conservator on behalf of the ward.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020.

§ 93-20-123. Temporary substitute guardian or conservator.

(1) The court may appoint a temporary substitute guardian or conservator for a ward in the discretion of the court.

(2) Except as otherwise ordered by the court, a temporary substitute guardian or temporary substitute conservator appointed under this section has the powers stated in the order of appointment of the guardian or conservator. The authority of the existing guardian or conservator is suspended for as long as the temporary substitute guardian or conservator has authority.

(3) Notice of appointment of a temporary substitute guardian or temporary substitute conservator shall be given to the ward and all interested parties as directed by the court.

(4) The court may remove a temporary substitute guardian or temporary substitute conservator at any time. The temporary substitute guardian or temporary substitute conservator must make any report the court requires.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020.

§ 93-20-124. Registration of order; effect.

(1) If a guardian has been appointed in another state for an individual, and a petition for guardianship for the individual is not pending in this state, the guardian appointed in the other state, after giving notice to the appointing court, may register the guardianship order in this state by filing certified copies of the order and letters of guardianship as a foreign judgment in a court of an appropriate county of this state.

(2) If a conservator has been appointed in another state for an individual, and a petition for conservatorship for the individual is not pending in this state, the conservator appointed for the individual in the other state, after giving notice to the appointing court, may register the conservatorship in this state by filing certified copies of the order of conservatorship, letters of conservatorship, and any bond or other asset-protection arrangement required by the court as a foreign judgment in a court of a county in which property belonging to the individual is located.

(3) Upon registration under this section of a guardianship or conservatorship order from another state, the guardian or conservator may exercise in this state all powers authorized in the order except as prohibited by this chapter and law of this state other than this chapter. If the guardian or conservator is not a resident of this state, the guardian or conservator may maintain an action or proceeding in this state subject to any condition imposed by this state on an action or proceeding by a nonresident party.

(4) The court may grant any relief available under this chapter and law of this state other than this chapter to enforce an order registered under this section.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020.

§ 93-20-125. Transition provisions.

Except as otherwise provided in this chapter:

(a) This chapter applies to all guardianship and conservatorship proceedings commenced on or after January 1, 2020;

(b) This chapter applies to all guardianship and conservatorship proceedings commenced before January 1, 2020, unless the court, in its discretion, determines that the superseded law should apply. The requirements of this chapter providing for increased court oversight and periodic monitoring do not require that a new proceeding be commenced; and

(c) An act done before January 1, 2020, is not affected by this chapter.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020; Laws, 2020, ch. 344, § 9, eff from and after passage (approved June 23, 2020).

Amendment Notes — The 2020 amendment, effective June 23, 2020, rewrote (b), which read: "This chapter applies to all guardianship and conservatorship proceedings commenced before January 1, 2020, unless the court finds that application of a particular provision of this chapter would substantially interfere with the effective conduct of the proceedings or prejudice the rights of the parties, in which case the particular provision of this chapter does not apply and the superseded law applies; and."

ARTICLE 2

GUARDIANSHIP OF MINOR

Sec.

93-20-201. Basis for appointment of guardian for minor.
93-20-202. Petition for appointment of guardian for minor.
93-20-203. Notice of hearing for appointment of guardian for minor.
93-20-204. Attorney for minor.
93-20-205. Rights at hearing.
93-20-206. Order on appointment; limited guardianship for minor.
93-20-207. Emergency guardian for minor.
93-20-208. Duties of guardian for minor.
93-20-209. Powers of guardian for minor.
93-20-210. Removal of guardian for minor; termination of guardianship; appointment of successor.

§ 93-20-201. Basis for appointment of guardian for minor.

(1) A person becomes a guardian for a minor only on appointment by the court.

(2) The court may appoint a guardian for a minor who does not have a guardian if the court finds the appointment is in the minor's best interest, and:

(a) Each parent of the minor, after being fully informed of the nature and consequences of guardianship, consents;

(b) All parental rights have been terminated; or

(c) There is clear and convincing evidence that no parent of the minor is willing or able to exercise the powers the court is granting the guardian.

(3) The guardian for a minor is not required to retain an attorney of record for the guardianship if the court finds that this would impose an undue burden on the ward's estate.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020; Laws, 2020, ch. 344, § 10, eff from and after passage (approved June 23, 2020).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (3) by substituting "if the court finds that this" for "if the courts finds that this." The Joint Committee ratified the correction at its October 19, 2020, meeting.

Amendment Notes — The 2020 amendment, effective June 23, 2020, added (3).

§ 93-20-202. Petition for appointment of guardian for minor.

(1) A person interested in the welfare of a minor, including the minor, may petition for appointment of a guardian for the minor.

(2) A petition under subsection (1) must comply with the requirement for an affidavit under the Uniform Child Custody Jurisdiction and Enforcement Act (Title 93, Chapter 27, Mississippi Code of 1972) and must also include:

(a) The name and address of any attorney for the parents of the minor;

(b) The reason guardianship is sought and would be in the best interest of the minor;

(c) The name and address of any proposed guardian and the reason the proposed guardian should be selected; and

(d) If the minor has property other than personal effects, a general statement of the minor's property with an estimate of its value.

(3) Notice of a hearing on a petition filed after the appointment of a guardian which seeks an order under this article, together with a copy of the petition, must be given to the ward, the guardian, the parents of the ward, and any other person the court determines.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020; Laws, 2020, ch. 344, § 11, eff from and after passage (approved June 23, 2020).

Amendment Notes — The 2020 amendment, effective June 23, 2020, in (3), substituted "given to the ward" for "given to the respondent" and inserted "the parents of the ward."

§ 93-20-203. Notice of hearing for appointment of guardian for minor.

(1) If a petition is filed under Section 93-20-202, the court must set a date, time and place for a hearing, and the petitioner must cause summons to be issued and served not less than seven (7) days before the hearing, together with a copy of the petition, on each of the following who is not the petitioner:

(a) The minor, if the minor will be fourteen (14) years of age or older at the time of the hearing;

(b) Each parent of the minor who can be found with reasonable diligence or, if there is none, the adult nearest in kinship who can be found with reasonable diligence; and

(c) Each individual who had primary care or custody of the minor for at least sixty (60) days during the six (6) months immediately before the filing of the petition.

(2) For any other person the court determines should know of the

proceedings, notice must be provided under Rule 5 of the Mississippi Rules of Civil Procedure.

(3) A petition under this article must state the name and address of an attorney representing the petitioner, if any, and must set forth under the style of the case and before the body of the petition the following language in bold or highlighted type:

> **"THE RELIEF SOUGHT HEREIN MAY AFFECT YOUR LEGAL RIGHTS. YOU HAVE A RIGHT TO NOTICE OF ANY HEARING ON THIS PETITION, TO ATTEND ANY SUCH HEARING, AND TO BE REPRESENTED BY AN ATTORNEY."**

(4) If a petitioner is unable to serve summons under subsection (1)(a), the court may appoint a guardian ad litem for the minor for the purpose of receiving summons.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020; Laws, 2020, ch. 344, § 12, eff from and after passage (approved June 23, 2020).

Amendment Notes — The 2020 amendment, effective June 23, 2020, in (1), in the introductory paragraph, substituted "cause summons to be issued and served not less than seven (7) days before the hearing" for "serve not less than seven (7) days' notice of the hearing"; deleted (c), which read: "Any adult with whom the minor resides," redesignated former (d) as (c), and deleted former (e), which read: "Any other person the court determines should receive service of notice; added (2), and redesignated former (2) and (3) as (3) and (4); and in (4) substituted "summons" for "notice" twice.

§ 93-20-204. Attorney for minor.

The court may appoint an attorney to represent a minor who is the subject of a proceeding under Section 93-20-202 if:

(a) Requested by the minor who is fourteen (14) years of age or older;

(b) Recommended by a guardian ad litem; or

(c) The court determines the minor needs representation.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020.

§ 93-20-205. Rights at hearing.

(1) The court shall require a minor who is the subject of a hearing for appointment of a guardian to attend the hearing and allow the minor to participate in the hearing unless the court determines, by clear and convincing evidence presented at the hearing or at a separate hearing, that:

(a) The minor consistently and repeatedly refused to attend the hearing after being fully informed of the right to attend and, if the minor is fourteen (14) years of age or older, the potential consequences of failing to do so;

(b) There is no practicable way for the minor to attend the hearing;

(c) The minor lacks the ability or maturity to participate meaningfully in the hearing; or

(d) Attendance would be harmful to the minor.

(2) Unless excused by the court for good cause shown, the person proposed

to be appointed as guardian for a minor must attend a hearing for appointment of a guardian.

(3) Each parent of a minor who is the subject of a hearing for appointment of a guardian has the right to attend the hearing.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020.

§ 93-20-206. Order on appointment; limited guardianship for minor.

(1) After a hearing the court may appoint a guardian for a minor, dismiss the proceeding, or take other appropriate action consistent with this chapter or law of this state other than this chapter.

(2) In appointing a guardian under subsection (1), the following apply:

(a) The court shall appoint a person nominated as guardian by a parent of the minor in a will or other record unless the court finds the appointment is contrary to the best interest of the minor.

(b) If multiple parents have nominated different persons to serve as guardian, the court shall appoint the nominee whose appointment is in the best interest of the minor, unless the court finds that appointment of none of the nominees is in the best interest of the minor.

(c) If a guardian is not appointed under paragraph (a) or (b), the court shall appoint the person nominated by the minor if the minor is fourteen (14) years of age or older unless the court finds that appointment is contrary to the best interest of the minor. In that case, the court shall appoint as guardian a person whose appointment is in the best interest of the minor.

(3) In the interest of maintaining or encouraging involvement by a minor's parent in the minor's life, developing self-reliance of the minor, or for other good cause, the court, at the time of appointment of a guardian for the minor or later, on its own or on motion of the minor or other interested person, may create a limited guardianship by limiting the powers otherwise granted by this article to the guardian. Following the same procedure, the court may grant additional powers or withdraw powers previously granted.

(4) The court, as part of an order appointing a guardian for a minor, shall state rights retained by any parent of the minor, which may include contact or visitation with the minor, decision-making regarding the minor's health care, education, or other matter, or access to a record regarding the minor.

(5) An order granting a guardianship for a minor must state that each parent of the minor is entitled to notice that:

(a) The location of the minor's residency has changed;

(b) The court has modified or limited the powers of the guardian; or

(c) The court has removed the guardian.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020; Laws, 2020, ch. 344, § 13, eff from and after passage (approved June 23, 2020).

Amendment Notes — The 2020 amendment, effective June 23, 2020, in (1), deleted "under Section 93-20-202" following "After a hearing."

§ 93-20-207. Emergency guardian for minor.

(1) On a petition by a person interested in a minor's welfare or a petition filed under Section 93-20-202, the court may appoint an emergency guardian for the minor if the court finds:

(a) Appointment of an emergency guardian is likely to prevent substantial harm to the minor's health, safety, or welfare; and

(b) No other person appears to have authority and willingness to act in the circumstances.

(2) The duration of authority of an emergency guardian for a minor may not exceed sixty (60) days, and the emergency guardian may exercise only the powers specified in the order of appointment. The emergency guardian's authority may be extended one (1) time for not more than sixty (60) days if the court finds that the conditions for appointment of an emergency guardian in subsection (1) continue.

(3) Except as otherwise provided in subsection (4), summons giving reasonable notice of the date, time, and place of a hearing on a petition for appointment of an emergency guardian for a minor must be given to:

(a) The minor, if the minor is fourteen (14) years of age or older;

(b) Any attorney appointed under Section 93-20-204;

(c) Each parent of the minor;

(d) Any person, other than a parent, having care or custody of the minor; and

(e) Any other person the court determines.

(4) The court may appoint an emergency guardian for a minor under subsection (3) without notice or a hearing only if the court finds from an affidavit or testimony that the minor's health, safety, or welfare will be substantially harmed before a hearing after notice of the appointment could be held. If the court appoints an emergency guardian to an unrepresented minor or the attorney for a represented minor without notice, notice of the appointment must be given not later than forty-eight (48) hours after the appointment to the individuals listed in subsection (3) and summons must be issued on continuation of the guardianship. The court must hold a hearing on continuation of a guardianship within five (5) days of any objection or other contest. Not later than five (5) days after the appointment, the court must hold a hearing on the appropriateness of the appointment.

(5) Appointment of an emergency guardian under this section, with or without notice, is not a determination that a basis exists for appointment of a guardian under Section 93-20-201.

(6) The court may remove an emergency guardian appointed under this section at any time. The emergency guardian must make any report the court requires.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020; Laws, 2020, ch. 344, § 14, eff from and after passage (approved June 23, 2020).

Amendment Notes — The 2020 amendment, effective June 23, 2020, in (3), inserted "summons giving"; and in (4), added "and summons must be issued on continuation of the guardianship" at the end of the second sentence.

§ 93-20-208. Duties of guardian for minor.

(1) A guardian for a minor is a fiduciary. Except as otherwise limited by the court, a guardian for a minor has the duties and responsibilities of a parent regarding the minor's support, care, education, health, safety, and welfare. A guardian must act in the minor's best interest and exercise reasonable care, diligence, and prudence.

(2) A guardian for a minor must:

(a) Become personally acquainted with the minor and maintain sufficient contact with the minor to know and report to the court the minor's abilities, limitations, needs, opportunities, and physical and mental health;

(b) Take reasonable care of the minor's personal effects and bring a proceeding for a conservatorship if necessary to protect other property of the minor;

(c) Expend funds of the minor that have been received by the guardian for the minor's current needs for support, care, education, health, safety, and welfare;

(d) Conserve any funds of the minor not expended under paragraph (c) for the minor's future needs, but if a conservator is appointed for the minor, pay the funds as directed by the court to the conservator to be conserved for the minor's future needs;

(e) Report the condition of the minor and account for funds and other property of the minor in the guardian's possession or subject to the guardian's control, as required by court rule or ordered by the court on application of a person interested in the minor's welfare;

(f) Inform the court of any change in the minor's dwelling or address; and

(g) In determining what is in the minor's best interest, take into account the minor's preferences to the extent actually known or reasonably ascertainable by the guardian.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020.

§ 93-20-209. Powers of guardian for minor.

(1) Except as otherwise limited by court order, a guardian of a minor has the powers a parent otherwise would have regarding the minor's support, care, education, health, safety, and welfare.

(2) Except as otherwise limited by court order, a guardian for a minor may:

(a) Apply for and receive funds up to the amount set forth in Section 93-20-431 and benefits otherwise payable for the support of the minor to the minor's parent, guardian, or custodian under a statutory system of benefits or insurance or any private contract, devise, trust, conservatorship, or custodianship.

(b) Unless inconsistent with a court order entitled to recognition in this state, take custody of the minor and establish the minor's place of dwelling and, on authorization of the court, establish or move the minor's dwelling outside this state.

(c) If the minor is not subject to conservatorship, commence a proceeding, including an administrative proceeding, or take other appropriate action to compel a person to support the minor or make a payment for the benefit of the minor;

(d) Consent to health or other care, treatment, or service for the minor; or

(e) To the extent reasonable, delegate to the minor responsibility for a decision affecting the minor's well-being.

(3) The court may authorize a guardian for a minor to consent to the adoption of the minor if the minor does not have a parent.

(4) A guardian for a minor may consent to the marriage of the minor if authorized by the court.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020.

§ 93-20-210. Removal of guardian for minor; termination of guardianship; appointment of successor.

(1) Guardianship for a minor under this chapter terminates:

(a) On the minor's death, adoption, emancipation, attainment of majority, or on a date set by the court; or

(b) When the court finds that the standard in Section 93-20-201 for appointment of a guardian is not satisfied, unless the court finds that:

(i) Termination of the guardianship would be harmful to the minor; and

(ii) The minor's interest in the continuation of the guardianship outweighs the interest of any parent of the minor in restoration of the parent's right to make decisions for the minor.

(2) A ward or any party may petition the court to terminate the guardianship, modify the guardianship, remove the guardian and appoint a successor guardian.

(3) A petitioner under subsection (2) must give notice of the hearing on the petition to the minor, if the minor is fourteen (14) years of age or older and is not the petitioner, and to the guardian, each parent of the minor, and any other person the court determines.

(4) Not later than thirty (30) days after appointment of a successor guardian for a minor, notice must be given of the appointment to the ward, if the minor is fourteen (14) years of age or older, to each parent of the minor, and to any other person the court determines.

(5) When terminating a guardianship for a minor under this section, the court may issue an order providing for transitional arrangements that will assist the minor with a transition of custody and that is in the best interest of the minor.

(6) A guardian for a minor who is removed must cooperate with a successor guardian to facilitate transition of the guardian's responsibilities and protect the best interest of the minor.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020.

ARTICLE 3

GUARDIANSHIP OF ADULT

Sec.

93-20-301. Basis for appointment of guardian for adult.
93-20-302. Petition for appointment of guardian for adult.
93-20-303. Notice of hearing for appointment of guardian for adult; notice of hearing after appointment of guardian.
93-20-304. Appointment of guardian ad litem.
93-20-305. Professional evaluation.
93-20-306. Rights at hearing.
93-20-307. Confidentiality of records.
93-20-308. Who may be guardian for adult.
93-20-309. Order on appointment of guardian.
93-20-310. Notice of order of appointment; rights.
93-20-311. Emergency guardian for adult.
93-20-312. Duties of guardian for adult.
93-20-313. Powers of guardian for adult.
93-20-314. Special limitations on guardian's power.
93-20-315. Guardian's plan.
93-20-316. Guardian's well-being report; monitoring of guardianship.
93-20-317. Removal of guardian for adult; appointment of successor.
93-20-318. Termination or modification of guardianship for adult.

§ 93-20-301. Basis for appointment of guardian for adult.

(1) The court may appoint a guardian for an adult when the respondent lacks the ability to meet essential requirements for physical health, safety or self-care because:

(a) The adult is unable to receive and evaluate information or make or communicate decisions, even with appropriate supportive services or technological assistance; or

(b) The adult is found to be a person with mental illness or a person with an intellectual disability as defined in Section 41-21-61 who is also incapable of taking care of his or her person.

(2) The court shall grant to a guardian only those powers necessitated by the limitations and demonstrated needs of the ward and must enter orders that will encourage the development of the ward's maximum self-determination and independence. The court must consider any less restrictive alternative that would meet the needs of the ward.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020; Laws, 2020, ch. 344, § 15, eff from and after passage (approved June 23, 2020).

Amendment Notes — The 2020 amendment, effective June 23, 2020, in (2), deleted "appointed under subsection (1)" following "grant to guardian."

§ 93-20-302. Petition for appointment of guardian for adult.

(1) A proceeding under this article may be instituted by the chancellor or clerk of the chancery court, any relative or friend of the adult, or any other interested party, including the adult for whom the order is sought, by filing a sworn petition in the chancery court of the county of the residence of the adult, setting forth that the adult is alleged to be in need of a guardianship.

(2) The petition must state the name and address of an attorney representing the petitioner, if any, and must set forth under the style of the case and before the body of the petition the following language in bold or highlighted type:

> **"THE RELIEF SOUGHT HEREIN MAY AFFECT YOUR LEGAL RIGHTS. YOU HAVE A RIGHT TO NOTICE OF ANY HEARING ON THIS PETITION, TO ATTEND ANY SUCH HEARING, AND TO BE REPRESENTED BY AN ATTORNEY."**

(3) The guardian for an adult is not required to retain an attorney of record for the guardianship if the court finds that this would impose an undue burden on the ward's estate.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020; Laws, 2020, ch. 344, § 16, eff from and after passage (approved June 23, 2020).

Amendment Notes — The 2020 amendment, effective June 23, 2020, added (3).

§ 93-20-303. Notice of hearing for appointment of guardian for adult; notice of hearing after appointment of guardian.

Notice of hearing for appointment of guardian for adult; notice of hearing after appointment of guardian.

(1) On receipt of a petition under Section 93-20-302 for appointment of a guardian for a respondent who is an adult, the court must set a date, time and place for a hearing, and unless the court finds that the adult for whom the guardian is to be appointed is competent and joins in the petition, the petitioner must cause summons to be served not less than seven (7) days before the hearing, together with a copy of the petition, on the adult for whom the guardian is to be appointed. The court may, for good cause shown, direct that a shorter notice be given.

(2) Unless the court finds that the adult for whom the guardian is to be appointed is competent and joins in the petition, summons must also issue to:

(a) Any conservator appointed to the respondent;

(b) At least one (1) adult relative of the respondent who resides in Mississippi from the following group in the listed order of preference: spouse, children, parents, siblings; but if none of those can be found:

(i) To one (1) adult relative of the respondent who is not the petitioner and who resides in Mississippi if that relative is within the third degree of kinship.

(ii) If no relative within the third degree of kinship to the respondent is found residing in the State of Mississippi, the court shall either designate some other appropriate person to receive the summons or appoint a guardian ad litem to receive the summons.

(3) In a proceeding on a petition under this article, notice of the hearing must also be given to any other person the court determines is entitled to notice. Failure to give notice does not preclude the court from appointing a guardian.

(4) If the person for whom the guardian is to be appointed is entitled to any benefit, estate or income paid or payable by or through the Veterans' Administration of the United States government, such administration must also be given a summons.

(5) Notice of a hearing on a petition seeking an order under this article that is filed after the appointment of a guardian, together with a copy of the petition, must be given to the ward, the guardian, and any other person the court determines.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020; Laws, 2020, ch. 344, § 17, eff from and after passage (approved June 23, 2020).

Amendment Notes — The 2020 amendment, effective June 23, 2020, rewrote (1); deleted (2); which related to notice of a hearing in a proceeding on a petition under § 93-20-302; redesignated former (3) as (2), and rewrote it; added (3); in (4), substituted "given a summons" for "given notice"; and in (5), substituted "ward" for "respondent."

§ 93-20-304. Appointment of guardian ad litem.

The court may appoint a guardian ad litem to any respondent and allow suitable compensation payable out of the estate of the respondent, but the appointment shall not be made except when the court considers it necessary for the protection of the interest of the respondent; a judgment of any court is not void or erroneous for failure to have a guardian ad litem.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020.

§ 93-20-305. Professional evaluation.

(1) The chancery court must conduct a hearing to determine whether a guardian is needed for the respondent. Before the hearing, the court, in its discretion, may appoint a guardian ad litem to look after the interest of the person in question; the guardian ad litem must be present at the hearing and present the interests of the respondent for whose person a guardian is to be appointed.

(2) The chancery judge shall be the judge of the number and character of the witnesses and proof to be presented, except that the proof must include certificates made after a personal examination of the respondent by the

following professionals, each of whom shall make in writing a certificate of the result of that examination to be filed with the clerk of the court and become a part of the record of the case

(a) Two (2) licensed physicians; or

(b) One (1) licensed physician and either one (1) licensed psychologist, nurse practitioner, or physician's assistant.

(3) The personal examination may occur face-to-face or via telemedicine, but any telemedicine examination must be made using an audio-visual connection by a physician licensed in this state and as defined in Section 83-9-351. A nurse practitioner or physician assistant conducting an examination shall not also be in a collaborative or supervisory relationship, as the law may otherwise require, with the physician conducting the examination. A professional conducting an examination under this section may also be called to testify at the hearing.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020.

§ 93-20-306. Rights at hearing.

(1) At a hearing held under this article, the respondent may:

(a) Present evidence and subpoena witnesses and documents;

(b) Examine witnesses; and

(c) Otherwise participate in the hearing.

(2) Unless excused by the court for good cause shown, a proposed guardian must attend a hearing under this article.

(3) A hearing under this article must be closed upon request of the respondent and a showing of good cause.

(4) Any person may request to participate in a hearing under this article. The court may grant the request, with or without a hearing, on determining that the best interest of the respondent will be served. The court may impose appropriate conditions on the person's participation.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020; Laws, 2020, ch. 344, § 18, eff from and after passage (approved June 23, 2020).

Amendment Notes — The 2020 amendment, effective June 23, 2020, substituted "under this article" for "under Section 93-20-303" everywhere it appears.

§ 93-20-307. Confidentiality of records.

(1) An adult subject to a proceeding for a guardianship, an attorney designated by the adult, and a person entitled to notice either under Section 93-20-309(4) or a court order may access court records of the proceeding and resulting guardianship, including the guardian's plan under Section 93-20-315 and guardian's well-being report under Section 93-20-316. A person not otherwise entitled to access court records under this subsection may petition the court for access to court records of the guardianship, including the guardian's report and plan, for good cause. The court shall grant access if

access is in the best interest of the respondent or ward or furthers the public interest and does not endanger the welfare or financial interests of the respondent or ward.

(2) A report under Section 93-20-304 of a guardian ad litem or a professional evaluation under Section 93-20-305 may be considered confidential and may be sealed on filing when determined necessary by the court. If the court finds the file should be sealed, the file will remain available to:

(a) The court;

(b) The individual who is the subject of the report or evaluation, without limitation as to use;

(c) The petitioner, guardian ad litem, and petitioner's and respondent's attorneys, for purposes of the proceeding;

(d) Unless the court orders otherwise, an agent appointed under a power of attorney for health care or power of attorney for finances in which the respondent is the principal; and

(e) Any other person if it is in the public interest or for a purpose the court orders for good cause.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020.

§ 93-20-308. Who may be guardian for adult.

(1) Appointment of a guardian for an adult will be at the discretion of the court and in the best interest of the respondent. If two (2) or more persons have requested responsibility as guardian for the adult, the court shall select as guardian the person the court considers best qualified. In determining the best qualified person, the court shall consider the person's relationship with the respondent, the person's skills, the expressed wishes of the respondent, including any designation made in a will, durable power of attorney, or health-care directive, the extent to which the person and the respondent have similar values and preferences, and the likelihood the person will be able to perform the duties of a guardian successfully. The court, acting in the best interest of the respondent, may decline to appoint as guardian a person requesting such an appointment.

(2) If a qualified guardian under this section cannot be determined, or if other circumstances arise where the court determines that a guardian must instead be appointed, the court, at its discretion, may appoint the chancery court clerk for the county in which the proceedings were filed, to serve as the respondent's guardian. The chancery court clerk shall serve in the capacity ordered by the court unless a conflict of interest arises or the clerk presents circumstances where the court determines the clerk's recusal from appointment is permitted.

(3) A person that provides paid services to the respondent, or an individual who is employed by a person who provides paid services to the respondent or is the spouse, parent, or child of an individual who provides or is employed to provide paid services to the respondent, may not be appointed as guardian unless:

(a) The individual is related to the respondent by blood, marriage, or adoption; or

(b) The court finds by clear and convincing evidence that the person is the best qualified person available for appointment and the appointment is in the best interest of the respondent.

(4) An owner, operator, or employee of a long-term-care institution at which the respondent is receiving care may not be appointed as guardian unless the owner, operator, or employee is related to the respondent by blood, marriage, or adoption.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020.

§ 93-20-309. Order on appointment of guardian.

(1) A court order appointing a guardian for an adult must:

(a) Include a specific finding that clear and convincing evidence established that the identified needs of the respondent cannot be met by a less restrictive alternative, including use of appropriate supportive services and technological assistance; and

(b) Include a specific finding that clear and convincing evidence established the respondent was given proper summons notifying the respondent of the hearing on the petition.

(2) A court order establishing a full guardianship for an adult must state the basis for granting a full guardianship and include specific findings that support the conclusion that a limited guardianship would not meet the functional needs of the ward.

(3) A court order establishing a limited guardianship for an adult must state the specific powers granted to the guardian.

(4) The court, as part of an order establishing a guardianship for an adult, must identify and include the contact information for any person that subsequently is entitled to:

(a) Notice of the rights of the adult under Section 93-20-310(2);

(b) Notice of a change in the primary dwelling of the adult;

(c) Notice that the guardian has delegated:

(i) The power to manage the care of the adult;

(ii) The power to make decisions about where the adult lives;

(iii) The power to make major medical decisions on behalf of the adult;

(iv) A power that requires court approval under Section 93-20-314; or

(v) Substantially all powers of the guardian;

(d) A copy of the guardian's plan under Section 93-20-315 and the guardian's well-being report under Section 93-20-316;

(e) Access to court records relating to the guardianship;

(f) Notice of the death or significant change in the condition of the adult;

(g) Notice that the court has limited or modified the powers of the guardian; and

(h) Notice of the removal of the guardian.

(5) A spouse and adult children of a ward are entitled to notice under Section 93-20-303 unless the court determines notice would be contrary to the preferences or prior directions of the ward or not in the best interest of the ward.

(6)(a) If the chancellor finds from the evidence that the adult is incapable of taking care of his person, the chancellor shall appoint a guardian over the person.

(b) The costs and expenses of the proceedings shall be paid out of the estate of the person if a guardian is appointed. If a guardian is appointed and the adult has no estate, or if no guardian is appointed, then the costs and expenses must be paid by the person instituting the proceedings.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020; Laws, 2020, ch. 344, § 19, eff from and after passage (approved June 23, 2020).

Amendment Notes — The 2020 amendment, effective June 23, 2020, in (1)(b), substituted "summons notifying the respondent" for "notice"; and in (5), deleted "(3)" following "93-20-303."

§ 93-20-310. Notice of order of appointment; rights.

(1) A guardian appointed under Section 93-20-309 must give the ward and all other persons given notice under Section 93-20-309(4) a copy of the order of appointment, together with notice of the right to request termination or modification. The order and notice must be given not later than fourteen (14) days after the appointment.

(2) Not later than fourteen (14) days after appointment of a guardian under Section 93-20-309, the guardian must request from the court a statement of the rights of the ward and must give the statement to the ward and any other person entitled to notice under Section 93-20-303 or a court order. The statement must notify the ward of the right to:

(a) Seek termination or modification of the guardianship, or removal of the guardian, and choose an attorney to represent the adult in these matters;

(b) Be involved in decisions affecting the adult, including decisions about the adult's care, dwelling, activities, or social interactions, to the extent reasonably feasible;

(c) Be involved in health-care decision-making to the extent reasonably feasible and supported in understanding the risks and benefits of health-care options to the extent reasonably feasible;

(d) Be notified at least fourteen (14) days before a change in the adult's primary dwelling or permanent move to a nursing home, mental-health facility, or other facility that places restrictions on the individual's ability to leave or have visitors, unless the change or move is proposed in the guardian's plan under Section 93-20-315 or authorized by the court by specific order;

(e) Object to a change or move described in paragraph (d) and the process for objecting;

(f) Communicate, visit, or interact with others, including receiving visitors, and making or receiving telephone calls, personal mail, or electronic communications, including through social media, unless:

(i) The guardian has been authorized by the court by specific order to restrict communications, visits, or interactions;

(ii) A protective order is in effect that limits contact between the adult and a person; or

(iii) The guardian has good cause to believe restriction is necessary because interaction with a specified person poses a risk of significant physical, psychological, or financial harm to the adult, and the restriction is:

1. For a period of not more than seven (7) business days if the person has a family or pre-existing social relationship with the adult; or

2. For a period of not more than sixty (60) days if the person does not have a family or pre-existing social relationship with the adult;

(g) Receive a copy of the guardian's plan under Section 93-20-315 and the guardian's well-being report under Section 93-20-316; and

(h) Object to the guardian's plan or report.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020; Laws, 2020, ch. 344, § 20, eff from and after passage (approved June 23, 2020).

Amendment Notes — The 2020 amendment, effective June 23, 2020, in (2), deleted "(3)" following "93-20-303."

§ 93-20-311. Emergency guardian for adult.

(1) On a petition by a person interested in an adult's welfare or a petition filed under Section 93-20-302, the court may appoint an emergency guardian for the adult if the court finds:

(a) Appointment of an emergency guardian is likely to prevent substantial harm to the adult's physical health, safety, or welfare;

(b) No other person appears to have authority and willingness to act in the circumstances; and

(c) There is reason to believe that a basis for appointment of a guardian under Section 93-20-301 exists.

(2) The duration of authority of an emergency guardian for an adult may not exceed sixty (60) days, and the emergency guardian may exercise only the powers specified in the order of appointment. The emergency guardian's authority may be extended once for not more than sixty (60) days if the court finds that the conditions for appointment of an emergency guardian in subsection (1) continue. Summons must be issued on continuation of the guardianship as required in subsection (4).

(3) Except as otherwise provided in subsection (4), summons giving reasonable notice of the date, time, and place of a hearing on the petition must be given to the respondent, the respondent's attorney, and any other person the court determines.

(4)(a) The court may appoint an emergency guardian for an adult without notice to the adult and any attorney for the adult only if the court finds from an affidavit or testimony that the respondent's physical health, safety, or welfare will be substantially harmed before a hearing with notice on the appointment can be held. If the court appoints an emergency guardian without giving notice under subsection (3), the court must give notice of the appointment not later than forty-eight (48) hours after the appointment to:

(i) The respondent;

(ii) The respondent's attorney;

(iii) Any other person the court determines; and

(b) The court must hold a hearing on the appropriateness of the appointment not later than five (5) days after the appointment.

(5) Appointment of an emergency guardian under this section is not a final determination that a basis exists for appointment of a guardian under Section 93-20-301.

(6) The court may remove an emergency guardian appointed under this section at any time. The emergency guardian must make any report the court requires.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020; Laws, 2020, ch. 344, § 21, eff from and after passage (approved June 23, 2020).

Amendment Notes — The 2020 amendment, effective June 23, 2020, in (2), added the last sentence; in (3), inserted "summons giving"; in (4), designated the formerly undesignated first paragraph as (a), redesignated former (a) through (c) as (i) through (iii), and redesignated former (d) as (b), and therein inserted "The court must," and made a related change.

§ 93-20-312. Duties of guardian for adult.

(1) A guardian for an adult is a fiduciary. Except as otherwise limited by the court, a guardian for an adult shall make decisions regarding the support, care, education, health, and welfare of the ward to the extent necessitated by the adult's limitations.

(2) A guardian for an adult promotes the self-determination of the adult and, to the extent reasonably feasible, encourages the adult to participate in decisions, act on the adult's own behalf, and develop or regain the capacity to manage the adult's personal affairs. In furtherance of this duty, the guardian may:

(a) Become personally acquainted with the adult and maintain sufficient contact with the adult through regular visitation and other means, and to know the adult's abilities, limitations, needs, opportunities, and physical and mental health;

(b) To the extent reasonably feasible, identify the values and preferences of the adult and involve the adult in decisions affecting the adult, including decisions about the adult's care, dwelling, activities, or social interactions; and

(c) Make reasonable efforts to identify and facilitate supportive relationships and services for the adult.

(3) A guardian for an adult at all times shall exercise reasonable care, diligence, and prudence when acting on behalf of or making decisions for the adult. In furtherance of this duty, the guardian shall:

(a) Take reasonable care of the personal effects, pets, and service or support animals of the adult and bring a proceeding for a conservatorship if necessary to protect the adult's property;

(b) Expend funds and other property of the adult received by the guardian for the adult's current needs for support, care, education, health, and welfare;

(c) Conserve any funds and other property of the adult not expended under paragraph (b) for the adult's future needs, but if a conservator has been appointed for the adult, pay the funds and other property at least quarterly to the conservator to be conserved for the adult's future needs; and

(d) Monitor the quality of services, including long-term care services, provided to the adult.

(4) In making a decision for a ward, the guardian must make the decision the guardian reasonably believes the adult would make if the adult were able unless doing so would unreasonably harm or endanger the welfare or personal or financial interests of the adult. To determine the decision the ward would make if able, the guardian shall consider the adult's previous or current directions, preferences, opinions, values, and actions, to the extent actually known or reasonably ascertainable by the guardian.

(5) If a guardian for an adult cannot make a decision under subsection (4) because the guardian does not know and cannot reasonably determine the decision the adult probably would make if able, or the guardian reasonably believes the decision the adult would make would unreasonably harm or endanger the welfare or personal or financial interests of the adult, the guardian must act in accordance with the best interest of the adult. In determining the best interest of the adult, the guardian may consider:

(a) Information received from professionals and persons that demonstrate sufficient interest in the welfare of the adult;

(b) Other information the guardian believes the adult would have considered if the adult were able to act; and

(c) Other factors a reasonable person in the circumstances of the adult would consider, including consequences for others.

(6) A guardian for an adult immediately must notify the court if the condition of the adult has changed so that the adult is capable of exercising rights previously removed.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020.

§ 93-20-313. Powers of guardian for adult.

(1) Except as limited by court order, a guardian for an adult may:

(a) Apply for and receive funds and benefits for the support of the adult, unless a conservator is appointed for the adult and the application or receipt is within the powers of the conservator;

(b) Unless inconsistent with a court order, establish the adult's place of dwelling;

(c) Consent to health or other care, treatment, or service for the adult;

(d) If a conservator for the adult has not been appointed, commence a proceeding, including an administrative proceeding, or take other appropriate action to compel a person to support the adult or pay funds for the adult's benefit;

(e) To the extent reasonable, delegate to the adult responsibility for a decision affecting the adult's well-being; and

(f) Receive personally identifiable health-care information regarding the adult.

(2) In exercising a guardian's power under subsection (1)(b) to establish the adult's place of dwelling, the guardian must:

(a) Select a residential setting the guardian believes the adult would select if the adult were able, in accordance with the decision-making standard in Section 93-20-312(4) and (5). If the guardian does not know and cannot reasonably determine what setting the ward likely would choose if able, or if the guardian reasonably believes the decision the adult would make would unreasonably harm or endanger the welfare or personal or financial interests of the adult, the guardian must choose in accordance with Section 93-20-312(5) a residential setting that is consistent with the adult's best interest;

(b) In selecting among residential settings, give priority to a residential setting in a location that will allow the adult to interact with persons important to the adult and meet the adult's needs in the least restrictive manner reasonably feasible unless to do so would be inconsistent with the decision-making standard in Section 93-20-312(4) and (5);

(c) Establish or move the permanent place of dwelling of the adult to a nursing home, mental-health facility, or other facility that places restrictions on the adult's ability to leave or have visitors only if:

(i) The establishment or move is in the guardian's plan under Section 93-20-315;

(ii) The court authorizes the establishment or move; or

(iii) The guardian gives notice of the establishment or move at least fourteen (14) days before the establishment or move to the adult and all persons entitled to notice under Section 93-20-309(4) or court order, and no objection is filed;

(d) Establish or move the place of dwelling of the adult outside this state only if consistent with the guardian's plan and authorized by the court by specific order;

(e) Take action that would result in the sale of or surrender of the lease to the primary dwelling of the adult only if:

(i) The action is specifically included in the guardian's plan under Section 93-20-315;

(ii) The court authorizes the action by specific order; or

(iii) Notice of the action was given at least fourteen (14) days before the action to the adult and all persons entitled to the notice under Section 93-20-309(4) or court order and no objection has been filed; and

(f) Notify the court that the adult's dwelling or permanent residence has become so damaged by fire, flood, or other emergency circumstance that the guardian has had to temporarily or permanently relocate the adult to another residential setting.

(3) In exercising a guardian's power under subsection (1)(c) to make health-care decisions, the guardian shall:

(a) Involve the adult in decision-making to the extent reasonably feasible, including, when practicable, by encouraging and supporting the adult in understanding the risks and benefits of health-care options;

(b) Defer to a decision by an agent under an advanced healthcare directive executed by the adult and cooperate to the extent feasible with the agent making the decision; and

(c) Take into account:

(i) The risks and benefits of treatment options; and

(ii) The current and previous wishes and values of the adult, if known or reasonably ascertainable by the guardian.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020.

§ 93-20-314. Special limitations on guardian's power.

(1) Unless authorized by the court by specific order, a guardian for an adult does not have the power to revoke or amend an advanced health-care directive or power of attorney for finances executed by the adult. If an advanced health-care directive is in effect, unless there is a court order to the contrary, a health-care decision of an agent takes precedence over that of the guardian and the guardian must cooperate with the agent to the extent feasible. If a power of attorney for finances is in effect, unless there is a court order to the contrary, a decision by the agent which the agent is authorized to make under the power of attorney for finances takes precedence over that of the guardian and the guardian must cooperate with the agent to the extent feasible.

(2) A guardian for an adult may not initiate the commitment of the adult to a mental health facility except in accordance with the state's procedure for involuntary civil commitment.

(3) A guardian for an adult may not restrict the ability of the adult to communicate, visit, or interact with others, including receiving visitors and making or receiving telephone calls, personal mail, or electronic communications, including through social media, or participating in social activities, unless:

(a) Authorized by the court by specific order;

(b) A protective order is in effect that limits contact between the adult and a person; or

(c) The guardian has good cause to believe restriction is necessary because interaction with a specified person poses a risk of significant physical, psychological, or financial harm to the adult and the restriction is:

(i) For a period of not more than seven (7) business days if the person has a family or pre-existing social relationship with the adult; or

(ii) For a period of not more than sixty (60) days if the person does not have a family or pre-existing social relationship with the adult.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020.

§ 93-20-315. Guardian's plan.

(1) If required by the court, a guardian must file with the court a plan for the care of the adult no later than ninety (90) days after the court's order of appointment or order to file a plan. If a plan is required and there is a significant change in circumstances, or if the guardian seeks to deviate significantly from the guardian's plan, a guardian must file with the court a revised plan no later than ninety (90) days after the change in circumstances or decision to deviate from the plan. Every plan must be based on the needs of the adult and take into account the best interest of the adult as well as the adult's preferences, values, and prior directions, to the extent known to or reasonably ascertainable by the guardian. Along with other items determined necessary by the court, the guardian's plan must include:

(a) The living arrangement, services, and supports the guardian expects to arrange, facilitate, or continue for the adult;

(b) Social and educational activities the guardian expects to facilitate on behalf of the adult;

(c) Any person with whom the adult has a close personal relationship or relationship involving regular visitation and any plan the guardian has for facilitating visits with the person;

(d) The anticipated nature and frequency of the guardian's visits and communication with the adult;

(e) Goals for the adult, including any goal related to the restoration of the adult's rights, and how the guardian anticipates achieving the goals;

(f) Whether the adult has an existing plan and, if so, whether the guardian's plan is consistent with the adult's plan; and

(g) A statement or list of the amount the guardian proposes to charge for each service the guardian anticipates providing to the adult.

(2) A guardian must give reasonable notice of the filing of the guardian's plan under subsection (1), and a copy of the plan, to the adult ward, the adult ward's spouse, parents, children, and any other person the court determines. The notice must include a statement of the right to object to the plan and be given not later than fourteen (14) days after the filing.

(3) After the guardian's plan filed under this section is approved by the court, the guardian must provide a copy of the plan to the adult ward, the adult ward's spouse, parents, children, and any other person the court determines.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020.

§ 93-20-316. Guardian's well-being report; monitoring of guardianship.

(1) If there is a significant change in circumstances, or if the guardian seeks to deviate significantly from the guardian's plan, a guardian must file with the court a report in a record regarding the condition of the adult and accounting for funds and other property in the guardian's possession or subject to the guardian's control within ninety (90) days after being so ordered by the court.

(2) A report under subsection (1) must state:

(a) The mental, physical, and social condition of the adult;

(b) The living arrangements of the adult during the reporting period;

(c) A summary of any technological assistance, medical services, educational and vocational services, and other supports and services provided to the adult and the guardian's opinion as to the adequacy of the adult's care;

(d) A summary of the guardian's visits with the adult, including the dates of the visits;

(e) Action taken on behalf of the adult;

(f) The extent to which the adult has participated in decision-making;

(g) If the adult is living in a mental health facility or living in a facility that provides the adult with health-care or other personal services, whether the guardian considers the facility's current plan for support, care, treatment, or habilitation consistent with the adult's preferences, values, prior directions, and best interest;

(h) Any business relation the guardian has with a person the guardian has paid or that has benefited from the property of the adult;

(i) A copy of the guardian's most recently approved plan under Section 93-20-315 and a statement whether the guardian has deviated from the plan and, if so, how the guardian has deviated and why;

(j) Plans for future care and support of the adult;

(k) A recommendation as to the need for continued guardianship and any recommended change in the scope of the guardianship, when determined applicable by the court;

(*l*) Whether any co-guardian or successor guardian appointed to serve when a designated event occurs is alive and able to serve;

(m) Photographs of the adult ward and the adult ward's living conditions, as required by the court at its discretion; and

(n) Any amounts requested for reimbursement by the guardian of fees related to the administration of the guardianship or legal fees incurred for matters related to the guardianship.

(3) The court may appoint a guardian ad litem to review a report submitted under this section or any guardian's plan submitted under Section 93-20-315, interview the guardian or ward, or investigate any other matter involving the guardianship.

(4) Notice of the filing under this section of a guardian's well-being report, together with a copy of the report, must be given to the adult ward, the adult

ward's spouse, parents, children, and any other person the court determines. The notice and report must be delivered not later than fourteen (14) days after the filing.

(5) The court must establish procedures for monitoring a report submitted under this section and review each report at least annually to determine whether:

(a) The report provides sufficient information to establish if the guardian has complied with the guardian's duties;

(b) The guardianship should continue; and

(c) The guardian's requested fees, if any, should be approved.

(6) If the court determines there is reason to believe a guardian for an adult has not complied with the guardian's duties or the guardianship should be modified or terminated, the court:

(a) Shall notify the adult ward, the adult ward's spouse, parents, children, and persons entitled to notice under Section 93-20-309(4) or a court order;

(b) May appoint a guardian ad litem to interview the adult or guardian or investigate any matter involving the guardianship; and

(c) May hold a hearing to consider removal of the guardian, termination of the guardianship, or a change in the powers granted to the guardian or terms of the guardianship.

(7) A guardian for an adult may petition the court for approval of a report filed under this section. The court after review may approve the report. If the court approves the report, there is a rebuttable presumption the report is accurate as to a matter adequately disclosed in the report.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020.

§ 93-20-317. Removal of guardian for adult; appointment of successor.

(1) Upon petition and for good cause shown, the court may hold a hearing to consider whether to remove a guardian for an adult for failure to perform the guardian's duties and appoint a successor guardian to assume the duties of guardian.

(2) Notice of a petition under this section must be given to the ward, the guardian, and any other person the court determines.

(3) A ward who seeks to remove the guardian and have a successor guardian appointed has the right to choose an attorney for representation in this matter. The court shall award reasonable attorney's fees to the attorney for the adult as provided in Section 93-20-118.

(4) Not later than ten (10) days after appointing a successor guardian, the court shall give notice of the appointment to the adult ward, the adult ward's spouse, parents, children, and any person entitled to notice under a court order.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020.

§ 93-20-318. Termination or modification of guardianship for adult.

(1) Upon petition and for good cause shown, the court may hold a hearing to consider whether termination of the guardianship exists on the ground that a basis for appointment under Section 93-20-301 does not exist or termination would be in the best interest of the adult or for other good cause; or modification of the guardianship exists on the ground that the extent of protection or assistance granted is not appropriate or for other good cause.

(2) Notice of a petition under this section must be given to the ward, the guardian, and any other person the court determines.

(3) On presentation of prima facie evidence for termination of a guardianship for an adult, the court shall order termination unless it is proven that a basis for appointment of a guardian under Section 93-20-301 exists.

(4) The court shall modify the powers granted to a guardian for an adult if the powers are excessive or inadequate due to a change in the abilities or limitations of the adult, the adult's supports, or other circumstances.

(5) Unless the court otherwise orders for good cause shown, before terminating or modifying a guardianship for an adult, the court shall follow the same procedures to safeguard the rights of the adult which apply to a petition for guardianship.

(6) A ward who seeks to terminate or modify the terms of the guardianship has the right to choose an attorney for representation in the matter. The court shall award reasonable attorney's fees to the attorney for the adult as provided in Section 93-20-118.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020.

ARTICLE 4

CONSERVATORSHIP

Sec.
93-20-401. Basis for appointment of conservator.
93-20-402. Petition for appointment of conservator; notice.
93-20-403. Notice and hearing for appointment of conservator; notice of hearing after appointment of conservator.
93-20-404. Order to preserve or apply property while proceeding pending.
93-20-405. Appointment and role of guardian ad litem.
93-20-406. Appointment of attorney.
93-20-407. Professional evaluation.
93-20-408. Rights at hearing.
93-20-409. Confidentiality of records.
93-20-410. Who may be conservator.
93-20-411. Order on appointment of conservator.
93-20-412. Notice of order of appointment; rights.
93-20-413. Emergency conservator.
93-20-414. Powers of conservator requiring court approval.
93-20-415. Petition for order after appointment.

Sec.
93-20-416. Bond; oath; waiver; financial institutions; alternative asset-protection arrangement.
93-20-417. Terms and requirements of bond.
93-20-418. Duties of conservator.
93-20-419. Conservator's plan.
93-20-420. Inventory; records.
93-20-421. Administrative powers of conservator not requiring court approval.
93-20-422. Distribution from conservatorship estate.
93-20-423. Conservator's report and accounting; monitoring.
93-20-424. Attempted transfer of property by the ward.
93-20-425. Transaction involving conflict of interest.
93-20-426. Protection of person dealing with conservator.
93-20-427. Presentation and allowance of claim.
93-20-428. Personal liability of conservator.
93-20-429. Removal of conservator; appointment of successor.
93-20-430. Termination or modification of conservatorship.
93-20-431. Transfer for benefit of minor without appointment of conservator.

§ 93-20-401. Basis for appointment of conservator.

(1) **For a minor.** The court may appoint a conservator for the property or financial affairs of a minor if the court finds by clear and convincing evidence that appointment of a conservator is in the minor's best interest, and:

(a) If the minor has a parent, the court gives weight to any recommendation of the parent whether an appointment is in the minor's best interest; and

(b) Either:

(i) The minor owns funds or other property requiring management or protection that otherwise cannot be provided;

(ii) The minor has or may have financial affairs that may be put at unreasonable risk or hindered because of the minor's age; or

(iii) Appointment is necessary or desirable to obtain or provide funds or other property needed for the support, care, education, health, or welfare of the minor.

(2) **For an adult.** The court may appoint a conservator for the property or financial affairs of an adult if the court finds by clear and convincing evidence that:

(a) The adult is unable to manage property or financial affairs because:

(i) Of a limitation in the adult's ability to receive and evaluate information or make or communicate decisions, even with the use of appropriate supportive services or technological assistance;

(ii) The adult is missing, detained, incarcerated, or unable to return to the United States;

(b) Appointment is necessary to:

(i) Avoid harm to the adult or significant dissipation of the property of the adult; or

(ii) Obtain or provide funds or other property needed for the support, care, education, health, or welfare of the adult or of an individual entitled to the adult's support; and

(c) The respondent's identified needs cannot be met by a less restrictive alternative.

(3) The court shall grant a conservator only those powers necessitated by demonstrated limitations and needs of the respondent and issue orders that will encourage development of the respondent's maximum self-determination and independence. The court may not establish a full conservatorship if a limited conservatorship or other less restrictive alternative would meet the needs of the respondent.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020.

§ 93-20-402. Petition for appointment of conservator; notice.

(1) A person interested in the estate, financial affairs, or welfare of the individual, including a person that would be adversely affected by lack of effective management of property or financial affairs of the individual, may petition for the appointment of a conservator for the individual.

(2) The proceeding may be instituted by the chancellor or clerk of the chancery court, any relative or friend of the individual, or any other interested party, including the individual for whom the order is sought, by filing a sworn petition in the chancery court of the residence of the individual setting forth that the individual is alleged to be in need of a conservatorship.

(3) The petition must state the name and address of an attorney representing the petitioner, if any, and must set forth under the style of the case and before the body of the petition the following language in bold or highlighted type:

"THE RELIEF SOUGHT IN THIS PETITION MAY AFFECT YOUR LEGAL RIGHTS. YOU HAVE A RIGHT TO NOTICE OF ANY HEARING ON THIS PETITION, TO ATTEND ANY HEARING, AND TO BE REPRESENTED BY AN ATTORNEY."

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020.

§ 93-20-403. Notice and hearing for appointment of conservator; notice of hearing after appointment of conservator.

(1) On receipt of a petition under Section 93-20-402 for appointment of a conservator for a respondent, the court must set a date, time, and place for a hearing on the petition, and unless the court finds that the respondent for whom the conservator is to be appointed is competent and joins in the petition, the petitioner must cause summons to be served not less than seven (7) days before the hearing, together with a copy of the petition, on the person for whom the conservator is to be appointed. The court may, for good cause shown, direct that a shorter notice be given.

(2) Unless the court finds that the respondent for whom the conservator is to be appointed is competent and joins in the petition, the summons must also issue to:

(a) Any guardian appointed to the respondent; and

(b) At least one (1) adult relative of the respondent who resides in Mississippi from the following group in the listed order of preference: spouse, children, parents, siblings; but if none of those can be found:

(i) To one (1) adult relative of the respondent and who is not the petitioner and who resides in Mississippi if that relative is within the third degree of kinship.

(ii) If no relative within the third degree of kinship to the respondent is found residing in the State of Mississippi, the court must either designate some other appropriate person to receive the summons or appoint a guardian ad litem to receive the summons.

(3) In a proceeding under this article, notice of the hearing also must be given to any other person interested in the respondent's welfare that the court determines is entitled to notice. Failure to give notice under this subsection does not preclude the court from appointing a guardian.

(4) If the person for whom the conservator is to be appointed is entitled to any benefit, estate or income paid or payable by or through the Veterans' Administration of the United States government, such administration shall also be given summons.

(5) Notice of a hearing on a petition seeking an order under this article that is filed after the appointment of a conservator, together with a copy of the petition, must be given to the ward, the conservator, and any other person the court determines.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020; Laws, 2020, ch. 344, § 22, eff from and after passage (approved June 23, 2020).

Joint Legislative Committee Notes — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (3) by inserting "that" between "respondent's welfare" and "the court determines." The Joint Committee ratified the correction at its October 19, 2020, meeting.

Amendment Notes — The 2020 amendment, effective June 23, 2020, rewrote (1); deleted (2); which related to notice of a hearing in a proceeding on a petition under § 93-20-402; redesignated former (3) as (2), and rewrote it; added (3); in (4), substituted "given a summons" for "given notice"; and in (5), substituted "ward" for "respondent."

§ 93-20-404. Order to preserve or apply property while proceeding pending.

While a petition under Section 93-20-402 is pending, after preliminary hearing and without notice to others, the court may issue an order to preserve and apply property of the respondent as required for the support of the respondent or an individual who is in fact dependent on the respondent.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020.

§ 93-20-405. Appointment and role of guardian ad litem.

The court may appoint a guardian ad litem to any respondent and allow suitable compensation payable out of the estate of the respondent, but the appointment shall not be made unless the court considers it necessary; a judgment of any court is not void or erroneous because of the failure to have a guardian ad litem.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020; Laws, 2020, ch. 344, § 23, eff from and after passage (approved June 23, 2020).

Amendment Notes — The 2020 amendment, effective June 23, 2020, deleted "for the protection of the interest of the respondent" following "unless the court considers it necessary."

§ 93-20-406. Appointment of attorney.

If the respondent in a proceeding for appointment of a conservator is not represented by an attorney, the court, in its discretion, may appoint an attorney to represent the respondent.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020.

§ 93-20-407. Professional evaluation.

(1) The chancery court must conduct a hearing to determine whether a conservator is needed for the respondent. Before the hearing, the court, in its discretion, may appoint a guardian ad litem, and the guardian ad litem must be present at the hearing and present the interests of the respondent.

(2) The chancery judge shall be the judge of the number and character of the witnesses and proof to be presented, except that the proof must include certificates made after a personal examination of the respondent by the following professionals, each of whom must make in writing a certificate of the result of that examination to be filed with the clerk of the court and become a part of the record of the case.

(a) Two (2) licensed physicians; or

(b) One (1) licensed physician and either one (1) licensed psychologist, nurse practitioner, or physician's assistant.

(3) The personal examination may occur face-to-face or via telemedicine, but any telemedicine examination must be made using an audiovisual connection by a physician licensed in this state and as defined in Section 83-9-351. A nurse practitioner or physician assistant conducting an examination shall not also be in a collaborative or supervisory relationship, as the law may otherwise require, with the physician conducting the examination. A professional conducting an examination under this section may also be called to testify at the hearing.

(4) The personal examination requirement in subsections (2) and (3) does not apply if the respondent is:

(a) Missing, detained or unable to return to the United States; or

(b) A minor with no other disability or incapacity. However, a personal examination is required to extend a conservatorship beyond the age of majority.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020; Laws, 2020, ch. 344, § 24, eff from and after passage (approved June 23, 2020).

Amendment Notes — The 2020 amendment, effective June 23, 2020, in (1), deleted "to look after the interest of the person in question" following "may appoint a guardian ad litem"; in (4), divided the former subsection into the introductory paragraph and (a), and added (b), and in the introductory paragraph, substituted "does not apply" for "shall not apply."

§ 93-20-408. Rights at hearing.

(1) At a hearing under this article, the respondent may:

(a) Present evidence and subpoena witnesses and documents;

(b) Examine witnesses; and

(c) Otherwise participate in the hearing.

(2) Unless excused by the court for good cause, a proposed conservator must attend a hearing under this article.

(3) A hearing under this article must be closed on request of the respondent and a showing of good cause.

(4) Any person may request to participate in a hearing under this article. The court may grant the request, with or without a hearing, on determining that the best interest of the respondent will be served. The court may impose appropriate conditions on the person's participation.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020; Laws, 2020, ch. 344, § 25, eff from and after passage (approved June 23, 2020).

Amendment Notes — The 2020 amendment, effective June 23, 2020, substituted "under this article" for "under Section 93-20-403" everywhere it appears.

§ 93-20-409. Confidentiality of records.

(1) An individual subject to a proceeding for a conservatorship, an attorney designated by the respondent or ward, and a person entitled to notice either under Section 93-20-411(5) or court order may access court records of the proceeding and resulting conservatorship, including the conservator's plan under Section 93-20-419 and the conservator's report under Section 93-20-423. A person not otherwise entitled to access to court records under this section for good cause may petition the court for access to court records of the conservatorship, including the conservator's plan and report. The court must grant access if access is in the best interest of the respondent or ward or furthers the public interest and does not endanger the welfare or financial interests of the respondent or individual.

(2) A report under Section 93-20-405 of a guardian ad litem or professional evaluation under Section 93-20-407 may be confidential and may be sealed on filing when determined necessary by the court. If the court finds the file should be sealed, the file shall remain available to:

(a) The court;

(b) The individual who is the subject of the report or evaluation, without limitation as to use;

(c) The petitioner, guardian ad litem and petitioner's and respondent's attorneys, for purposes of the proceeding;

(d) Unless the court directs otherwise, a person appointed under a power of attorney for finances in which the respondent is identified as the principal; and

(e) Any other person if it is in the public interest or for a purpose the court orders for good cause.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020.

§ 93-20-410. Who may be conservator.

(1) Appointment of a conservator is at the discretion of the court, and in the best interest of the respondent. If two (2) or more persons have requested responsibility as conservator, the court shall select as conservator the person the court considers best qualified. In determining the best qualified person, the court shall consider the person's relationship with the respondent, the person's skills, the expressed wishes of the respondent including any designation made in a will, durable power of attorney, or health-care directive, the extent to which the person and the respondent have similar values and preferences, and the likelihood the person will be able to perform the duties of a conservator successfully. The court, acting in the best interest of the respondent, may decline to appoint as conservator a person requesting the appointment.

(2) If a qualified conservator cannot be determined, the court, in its discretion, may appoint the chancery court clerk or probate administrator for the county in which the proceedings were filed to serve as the respondent's conservator. The chancery court clerk or the probate administrator shall serve in the capacity ordered by the court unless a conflict of interest arises or the clerk or the probate administrator presents circumstances where the court determines the clerk's recusal from appointment is permitted.

(3) A person that provides paid services to the respondent, or an individual who is employed by a person that provides paid services to the respondent or is the spouse, parent, or child of an individual who provides or is employed to provide paid services to the respondent, may not be appointed as conservator unless:

(a) The individual is related to the respondent by blood, marriage, or adoption; or

(b) The court finds by clear and convincing evidence that the person is the best qualified person available for appointment and the appointment is in the best interest of the respondent.

(4) An owner, operator, or employee of a long-term-care institution at which the respondent is receiving care may not be appointed as conservator unless the owner, operator, or employee is related to the respondent by blood, marriage, or adoption.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020.

§ 93-20-411. Order on appointment of conservator.

(1) A court order appointing a conservator for a minor must include findings to support appointment of a conservator and, if a full conservatorship is granted, the reason a limited conservatorship would not meet the identified needs of the minor.

(2) A court order appointing a conservator for an adult must:

(a) Include a specific finding that clear and convincing evidence has established that the identified needs of the respondent cannot be met by a less restrictive alternative, including use of appropriate supportive services or technological assistance; and

(b) Include a specific finding that clear and convincing evidence established that the respondent was given proper summons notifying the respondent of the hearing on the petition.

(3) A court order establishing a full conservatorship for an adult must state the basis for granting a full conservatorship and include specific findings to support the conclusion that a limited conservatorship would not meet the functional needs of the adult.

(4) A court order establishing a limited conservatorship must state the specific property placed under the control of the conservator and the powers granted to the conservator.

(5) The court, as part of an order establishing a conservatorship, must identify and include the contact information for any person that subsequently is entitled to:

(a) Notice of the rights of the ward under Section 93-20-412(2);

(b) Notice of a sale of or surrender of a lease to the primary dwelling of the individual;

(c) Notice that the conservator has delegated a power that requires court approval under Section 93-20-414 or substantially all powers of the conservator;

(d) Notice that the conservator will be unavailable to perform the conservator's duties for more than one (1) month;

(e) A copy of the conservator's plan under Section 93-20-419 and the conservator's report under Section 93-20-423;

(f) Access to court records relating to the conservatorship;

(g) Notice of a transaction involving a substantial conflict between the conservator's fiduciary duties and personal interests;

(h) Notice of the death or significant change in the condition of the individual;

(i) Notice that the court has limited or modified the powers of the conservator; and

(j) Notice of the removal of the conservator.

(6) If a ward is an adult, the spouse and adult children of the ward are entitled under subsection (5) to notice unless the court determines notice would be contrary to the preferences or prior directions of the ward or are not in the best interest of the ward.

(7) If a ward is a minor, each parent and adult sibling of the minor is entitled to notice under subsection (5) unless the court determines notice would not be in the best interest of the minor.

(8)(a) If the chancellor finds from the evidence that the person is in need of a conservatorship, the chancellor must appoint a conservator over the estate of the person.

(b) The costs and expenses of the proceedings shall be paid out of the estate of the respondent if a conservator is appointed. If a conservator is not appointed, the costs and expenses shall be paid by the person instituting the proceedings unless the proceedings were instituted by the court or the chancery clerk.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020; Laws, 2020, ch. 344, § 26, eff from and after passage (approved June 23, 2020).

Amendment Notes — The 2020 amendment, effective June 23, 2020, in (2)(b), substituted "summons notifying the respondent" for "notice"; and in (8), inserted "estate of the" in (a), and added "unless the proceedings were instituted by the court or the chancery clerk" at the end of (b).

§ 93-20-412. Notice of order of appointment; rights.

(1) A conservator appointed under Section 93-20-411 must give to the ward and to all other persons given notice under Section 93-20-403 a copy of the order of appointment. The order and notice must be given not later than fourteen (14) days after the appointment.

(2) Not later than fourteen (14) days after appointment of a conservator under Section 93-20-411, the court must give to the ward, the conservator, and any other person entitled to notice under Section 93-20-411(5), a statement of the rights of the ward and procedures to seek relief if the ward is denied those rights. The statement must be in plain language, in at least sixteen-point font, and to the extent feasible, in a language in which the ward is proficient. The statement must notify the ward of the right to:

(a) Seek termination or modification of the conservatorship, or removal of the conservator, and choose an attorney to represent the individual in these matters;

(b) Participate in decision-making to the extent reasonably feasible;

(c) Receive a copy of the conservator's plan under Section 93-20-419, the conservator's inventory under Section 93-20-420, and the conservator's report under Section 93-20-423; and

(d) Object to the conservator's inventory, plan, or report.

(3) If a conservator is appointed for the reasons stated in Section 93-20-401(2)(a)(ii) and the ward is missing, notice under this section to the individual is not required.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020.

§ 93-20-413. Emergency conservator.

(1) Upon a petition by a person interested in an individual's welfare or a

petition filed under Section 93-20-402, the court may appoint an emergency conservator for the individual if the court finds:

(a) Appointment of an emergency conservator is likely to prevent substantial and irreparable harm to the individual's property or financial interests;

(b) No other person appears to have authority and willingness to act in the circumstances; and

(c) There is reason to believe that a basis for appointment of a conservator under Section 93-20-401 exists.

(2) The duration of authority of an emergency conservator may not exceed sixty (60) days and the emergency conservator may exercise only the powers specified in the order of appointment. The emergency conservator's authority may be extended once for not more than sixty (60) days if the court finds that the conditions for appointment of an emergency conservator under subsection (1) continue. Summons must be issued on continuation of the guardianship as required in subsection (4).

(3) Except as otherwise provided in subsection (4), summons giving reasonable notice of the date, time, and place of a hearing on the petition must be given to the respondent, the respondent's attorney, and any other person the court determines.

(4) The court may appoint an emergency conservator without notice to the respondent and any attorney for the respondent only if the court finds from an affidavit or testimony that the respondent's property or financial interests will be substantially and irreparably harmed before a hearing with notice on the appointment can be held. If the court appoints an emergency conservator without giving notice under subsection (3), the court must give notice of the appointment not later than forty-eight (48) hours after the appointment to:

(a) The respondent;

(b) The respondent's attorney;

(c) Any other person the court determines; and

(d) Hold a hearing on the appropriateness of the appointment not later than five (5) days after the appointment.

(5) Appointment of an emergency conservator under this section is not a determination that a basis exists for appointment of a conservator under Section 93-20-401.

(6) The court may remove an emergency conservator appointed under this section at any time. The emergency conservator shall make any report the court requires.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020; Laws, 2020, ch. 344, § 27, eff from and after passage (approved June 23, 2020).

Amendment Notes — The 2020 amendment, effective June 23, 2020, added the last sentence of (2).

§ 93-20-414. Powers of conservator requiring court approval.

(1) Except as otherwise ordered by the court, a conservator must give

notice to persons entitled to notice under Section 93-20-411(5) and receive specific authorization by the court before the conservator may exercise with respect to the conservatorship the power to:

(a) Make a gift;

(b) Sell, encumber an interest in, or surrender a lease to the primary dwelling of the ward;

(c) Convey, release, or disclaim a contingent or expectant interest in property, including marital property and any right of survivorship incident to joint tenancy or tenancy by the entireties;

(d) Exercise or release a power of appointment;

(e) Create a revocable or irrevocable trust of property of the conservatorship estate, whether or not the trust extends beyond the duration of the conservatorship, or revoke or amend a trust revocable by the ward;

(f) Exercise a right to elect an option or change a beneficiary under an insurance policy or annuity or surrender the policy or annuity for its cash value;

(g) Exercise a right to an elective share in the estate of a deceased spouse of the ward or renounce or disclaim a property interest;

(h) Grant a creditor priority for payment over creditors of the same or higher class if the creditor is providing property or services used to meet the basic living and care needs of the ward and preferential treatment otherwise would be impermissible under Section 93-20-427(6);

(i) Make, modify, amend, or revoke the will of the ward in compliance with Section 91-5-1 et seq.;

(j) Pay premiums on any insurance policy issued on the life of the ward if the individual is a minor, the policy was issued during the lifetime of the individual's deceased parent, and the court finds the policy's continuance is warranted;

(k) Acquire or dispose of real property, including real property in another state, for cash or on credit, at public or private sale, and manage, develop, improve, exchange, partition, change the character of, or abandon property;

(*l*) Make repairs or alterations in a building or other structure, demolish any improvement, or raze an existing or erect a new wall or building if costs exceed Two Thousand Five Hundred Dollars ($2,500.00);

(m) Subdivide or develop land, dedicate land to public use, make or obtain the vacation of a plat and adjust a boundary, adjust a difference in valuation of land, exchange or partition land by giving or receiving consideration, and dedicate an easement to public use without consideration;

(n) Enter for any purpose into a lease of property as lessor or lessee, with or without an option to purchase or renew, for a term within or extending beyond the term of the conservatorship;

(o) Enter into a lease or arrangement for exploration and removal of minerals or other natural resources or a pooling or unitization agreement;

(p) Borrow funds, with or without security, to be repaid from the conservatorship estate or otherwise;

(q) Pay or contest a claim, settle a claim by or against the conservatorship estate or the ward by compromise, arbitration, or otherwise, or release, in whole or in part, a claim belonging to the conservatorship estate to the extent the claim is uncollectible; or

(r) Bring an action, claim, or proceeding in any jurisdiction for the protection of the conservatorship estate or the conservator in the performance of the conservator's duties;

(2) In approving a conservator's exercise of a power listed in subsection (1), the court must consider the ward's prior or current directions, preferences, opinions, values, and actions, to the extent actually known or reasonably ascertainable by the conservator. The court also must consider:

(a) The financial needs of the ward and individuals who are in fact dependent on the ward for support, and the interests of creditors of the individual;

(b) Possible reduction of income, estate, inheritance, or other tax liabilities;

(c) Eligibility for governmental assistance;

(d) The previous pattern of giving or level of support provided by the individual;

(e) Any existing estate plan or lack of estate plan of the individual;

(f) The life expectancy of the individual and the probability the conservatorship will terminate before the ward's death; and

(g) Any other relevant factor.

(3) A conservator may not revoke or amend a power of attorney for finances executed by the ward. If a power of attorney for finances is in effect, a decision of the conservator takes precedence over that of the attorney-in-fact only to the extent of the authorization granted to the conservator by court order.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020.

§ 93-20-415. Petition for order after appointment.

A ward or a person interested in the welfare of the individual may petition for an order:

(a) Requiring the conservator to furnish a bond or collateral or additional bond or collateral or allowing a reduction in a bond or collateral previously furnished;

(b) Requiring an accounting for the administration of the conservatorship estate;

(c) Directing distribution;

(d) Removing the conservator and appointing a temporary or successor conservator;

(e) Modifying the type of appointment or powers granted to the conservator, if the extent of protection or management previously granted is excessive or insufficient to meet the individual's needs, including because the individual's abilities or supports have changed;

(f) Rejecting or modifying the conservator's plan under Section 93-20-419, the conservator's inventory under Section 93-20-420, or the conservator's report under Section 93-20-423; or

(g) Granting other appropriate relief.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020.

§ 93-20-416. Bond; oath; waiver; financial institutions; alternative asset-protection arrangement.

(1) Except as otherwise provided in subsection (3), the court shall require a conservator to furnish a bond with a surety the court specifies, or require an alternative asset-protection arrangement, conditioned on faithful discharge of all duties of the conservator. The court may waive or partially waive the requirement if:

(a) The respondent is a minor and the minor's parent has waived the requirement in a valid holographic will or another instrument to take effect at the parent's death that is signed by the parent and attested by two (2) or more credible witnesses, not including the person nominated as conservator; or

(b) Part of the assets of the ward's estate are deposited in one or more banking corporations, building and loan associations or savings and loan associations ("financial institutions") in this state if the deposits are fully insured by the Federal Deposit Insurance Corporation (FDIC) and will remain on deposit in that institution until further order of the court, a certified copy or MEC-filed copy of the order for deposit having been furnished to the depository or depositories and its receipt acknowledged in a form that substantially complies with subsection (7); or

(c) The court finds that a bond or other asset-protection arrangement is not necessary to protect the interests of the individual subject to conservatorship. Except as otherwise provided in subsection (3), the court may not waive the requirement of bond or other asset-protection arrangement if the conservator is in the business of serving as a conservator and is being paid for the conservator's service.

(2) Unless the court directs otherwise, the bond required under this section must be in the amount of the aggregate capital value of the conservatorship estate, plus one (1) year's estimated income, less the value of property deposited under an arrangement requiring a court order for its removal and real property the conservator lacks power to sell or convey without specific court authorization. The court, in place of surety on a bond, may accept collateral for the performance of the bond, including a pledge of securities or a mortgage of real property.

(3) A banking institution insured by the FDIC qualified to do trust business in this state is not required to give a bond under this section.

(4) Every bond must be filed in the records of the chancery court and may be put in suit for any breach of the condition, whether the appointment be legal or not; and the condition shall be as follows:

"The condition of the above obligation is that if the above bound, as conservator of ________________ in County________________ shall faithfully discharge all the duties required of him by law, then the above obligation shall cease."

The conservator must also take and subscribe on oath, at or before the conservator's appointment, faithfully to discharge the duties of conservator of the ward according to law.

(5) A financial institution that substantially complies with the provisions of this article when acting as a depository of conservatorship funds is not liable to any person for so acting except for willful default, gross negligence or malfeasance.

(6) A financial institution that acts as a depository of the funds may charge a fee for servicing the account.

(7)

ACKNOWLEDGMENT OF RECEIPT OF ORDER FOR DEPOSIT

AND RECEIPT OF CASH FUNDS

The Chancery Court of ________________ County, Mississippi, having rendered its order in the above-entitled and numbered cause on the ________ day of ________, designating a banking institution insured by the Federal Deposit Insurance Corporation as the depository of the funds of ________________, by and through ________, as conservator, and the conservator, having elected to use ________________ (Name of Financial Institution) as the aforesaid depository, I, acting pursuant to my authority in and for said bank, do hereby acknowledge that I have received a copy of the order of the chancery court, duly certified as true and correct by the chancery clerk of ________________ County, Mississippi, or a MEC-filed copy of the order of the chancery court. I further note that said order provides that all funds so deposited to the account shall remain on deposit until further order of the court.

Receipt is also hereby acknowledged of the funds in the amount of $________ in this matter.

________________ (Name of Financial Institution) hereby acknowledges that the funds, described above, shall not be disbursed without further order of this court.

This the day ________ of________, ____.

STATE OF MISSISSIPPI
COUNTY OF ________________

Personally came and appeared before me, the undersigned authority in and for the jurisdiction aforesaid, the within named ________________ (Name of Bank Officer), who is ____________ (Job Title) of ________________ (Name of Financial Institution) and who acknowledged to me that he/she signed and delivered the above and foregoing Acknowledgment of Receipt of Order for Deposit and Receipt of Cash Funds as the act and deed of said bank, he/she being first duly authorized so to do.

Given under my hand and official seal,
this the ____ day of ________, ____.

____
Notary Public
____
My commission expires

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020.

§ 93-20-417. Terms and requirements of bond.

(1) The following rules apply to the bond required under Section 93-20-416:

(a) Except as otherwise provided by the bond, the surety and the conservator are jointly and severally liable.

(b) By executing a bond provided by a conservator, the surety submits to the personal jurisdiction of the court that issued letters of office to the conservator in a proceeding relating to the duties of the conservator in which the surety is named as a party. Notice of the proceeding must be given to the surety at the address shown in the records of the court in which the bond is filed and any other address of the surety then known to the person required to provide the notice.

(c) On petition of a successor conservator or person affected by a breach of the obligation of the bond, a proceeding may be brought against the surety for breach of the obligation of the bond.

(d) A proceeding against the bond may be brought until liability under the bond is exhausted.

(2) A proceeding may not be brought under this section against a surety of a bond on a matter as to which a proceeding against the conservator is barred.

(3) If a bond under Section 93-20-416 is not renewed by the conservator, the surety or sureties immediately must give notice to the court and the attorney for the conservatorship.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020.

§ 93-20-418. Duties of conservator.

(1) A conservator is a fiduciary and has duties of prudence and loyalty to the ward.

(2) A conservator must promote the self-determination of the ward and, to the extent feasible, encourage the ward to participate in decisions, act on the ward's own behalf, and develop or regain the capacity to manage the ward's personal affairs.

(3) In making a decision for a ward, the conservator must make the decision the conservator reasonably believes the ward would make if able, unless doing so would fail to preserve the resources needed to maintain the ward's well-being and lifestyle or otherwise unreasonably harm or endanger the welfare or personal or financial interests of the ward. To determine the decision the ward would make if able, the conservator must consider the ward's

prior or current directions, preferences, opinions, values, and actions, to the extent actually known or reasonably ascertainable by the conservator.

(4) If a conservator cannot make a decision under subsection (3) because the conservator does not know and cannot reasonably determine the decision the ward probably would make if able, or the conservator reasonably believes the decision the individual would make would fail to preserve resources needed to maintain the ward's well-being and lifestyle or otherwise unreasonably harm or endanger the welfare or personal or financial interests of the ward, the conservator shall act in accordance with the best interest of the ward. In determining the best interest of the ward, the conservator shall consider:

(a) Information received from professionals and persons who demonstrate sufficient interest in the welfare of the ward;

(b) Other information the conservator believes the ward would have considered if the ward were able to act; and

(c) Other factors a reasonable person in the circumstances of the ward would consider, including consequences for others.

(5) Except when inconsistent with the conservator's duties under subsections (1) through (4), and where investments other than in FDIC-insured investments are permitted in the court's order approving the conservator's plan, a conservator must invest and manage the conservatorship estate as a prudent investor would, by considering:

(a) The circumstances of the ward and the conservatorship estate;

(b) General economic conditions;

(c) The possible effect of inflation or deflation;

(d) The expected tax consequences of an investment decision or strategy;

(e) The role of each investment or course of action in relation to the conservatorship estate as a whole;

(f) The expected total return from income and appreciation of capital;

(g) The need for liquidity, regularity of income, and preservation or appreciation of capital; and

(h) The special relationship or value, if any, of specific property to the ward.

(6) The propriety of a conservator's investment and management of the conservatorship estate is determined in light of the facts and circumstances existing when the conservator decides or acts and not by hindsight.

(7) A conservator must make a reasonable effort to verify facts relevant to the investment and management of the conservatorship estate.

(8) A conservator that has special skills or expertise, or is named conservator in reliance on the conservator's representation of special skills or expertise, has a duty to use the special skills or expertise in carrying out the conservator's duties.

(9) In investing, selecting specific property for distribution, and invoking a power of revocation or withdrawal for the use or benefit of the ward, a conservator must consider any estate plan of the ward known or reasonably ascertainable to the conservator and may examine the will or other donative, nominative, or appointive instrument of the individual.

(10) A conservator must maintain insurance on the insurable real and personal property of the ward, unless the conservatorship estate lacks sufficient funds to pay for insurance or the court finds:

(a) The property lacks sufficient equity; or

(b) Insuring the property would unreasonably dissipate the conservatorship estate or otherwise not be in the best interest of the ward.

(11) A conservator has access to and authority over a digital asset of the ward to the extent provided by the Revised Uniform Fiduciary Access to Digital Assets Act (Title 91, Chapter 23, Mississippi Code of 1972).

(12) A conservator for an adult must notify the court if the condition of the adult has changed so that the adult has become capable of autonomy in exercising rights previously delegated to the conservator. The notice must be given immediately on learning of the change.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020.

§ 93-20-419. Conservator's plan.

(1) If required by the court, a conservator must file with the court a plan for investing, protecting, managing, expending, and distributing the assets of the conservatorship estate no later than ninety (90) days after the court's order of appointment or order to file a plan. If a plan is required and there is a significant change in circumstances, or if the conservator seeks to deviate significantly from the conservator's plan, a conservator must file with the court a revised plan no later than ninety (90) days after the change in circumstances or decision to deviate from the plan. Every plan must be based on the needs of the ward and take into account the best interest of the ward as well as the ward's preferences, values, and prior directions, to the extent known to or reasonably ascertainable by the conservator. Along with other items determined necessary by the court, the conservator's plan must include:

(a) A budget containing projected expenses and resources, including an estimate of the total amount of fees the conservator anticipates charging per year and a statement or list of the amount the conservator proposes to charge for each service the conservator anticipates providing to the individual;

(b) How the conservator will involve the individual in decisions about management of the conservatorship estate;

(c) Any step the conservator plans to take to develop or restore the ability of the ward to manage the conservatorship estate; and

(d) An estimate of the duration of the conservatorship.

(2) A conservator must give reasonable notice of the filing of the conservator's plan under subsection (1), together with a copy of the plan, to the ward, a person entitled to notice under Section 93-20-411(5) or a court order, and any other person the court determines. The notice must include a statement of the right to object to the plan and be given not later than fourteen (14) days after the filing.

(3) A ward and any person entitled under subsection (2) to receive notice and a copy of the conservator's plan may object to the plan.

(4) The court must review the conservator's plan filed under subsection (1) and determine whether to approve the plan or require a new plan. In deciding whether to approve the plan, the court shall consider objections made under subsection (3) and whether the plan is consistent with the conservator's duties and powers. The court may not approve the plan until thirty (30) days after its filing.

(5) After a conservator's plan under this section is approved by the court, the conservator must provide a copy of the plan to the ward, a person entitled to notice under Section 93-20-411(5) or a court order, and any other person the court determines.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020.

§ 93-20-420. Inventory; records.

(1) Unless the inventory requirement has been waived, not later than ninety (90) days after appointment, a conservator must prepare and file with the appointing court a detailed inventory of the conservatorship estate, together with an oath or affirmation that the inventory is believed to be complete and accurate as far as information permits.

(2) A conservator must give reasonable notice of the filing of an inventory to the ward, a person entitled to notice under Section 93-20-411(5) or a court order, and any other person the court determines. The notice must be given not later than fourteen (14) days after the filing.

(3) A conservator must keep records of the administration of the conservatorship estate and make them available for examination on reasonable request of the ward, a guardian for the ward, or any other person the conservator or the court determines.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020.

§ 93-20-421. Administrative powers of conservator not requiring court approval.

(1) Except as otherwise provided in Section 93-20-414 or qualified or limited in the court's order of appointment and stated in the letters of conservatorship, a conservator has all powers granted in this section and any additional power granted to a trustee by law of this state other than this chapter.

(2) The court may authorize the conservator in a court order to execute powers not listed in Section 93-20-414 without prior specific court authorization or confirmation, including by way of illustration, but not limited to, the following:

(a) To collect, hold, and retain property, including property in which the conservator has a personal interest and real property in another state, until the conservator determines disposition of the property should be made;

(b) To receive additions to the conservatorship estate;

(c) To continue or participate in the operation of a business or other enterprise;

(d) To acquire an undivided interest in property in which the conservator, in a fiduciary capacity, holds an undivided interest;

(e) To acquire or dispose of personal property;

(f) To continue to invest assets;

(g) To deposit funds or other property in a financial institution, including one operated by the conservator;

(h) To grant an option involving disposition of property or accept or exercise an option for the acquisition of property;

(i) To vote a security, in person or by general or limited proxy;

(j) To pay a call, assessment, or other sum chargeable or accruing against or on account of a security;

(k) To sell or exercise a stock subscription or conversion right;

(*l*) To consent, directly or through a committee or agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

(m) To hold a security in the name of a nominee or in other form without disclosure of the conservatorship so that title to the security may pass by delivery;

(n) To insure:

(i) The conservatorship estate, in whole or in part, against damage or loss in accordance with Section 93-20-418(10); and

(ii) The conservator against liability with respect to a third person;

(o) Advance funds for the protection of the conservatorship estate or the ward and all expenses, losses, and liability sustained in the administration of the conservatorship estate or because of holding any property for which the conservator has a lien on the conservatorship estate;

(p) Pay a tax, assessment, compensation of the conservator or any guardian, and other expense incurred in the collection, care, administration, and protection of the conservatorship estate;

(q) Pay a sum distributable to the ward or an individual who is in fact dependent on the ward by paying the sum to the distributee or for the use of the distributee:

(i) To the guardian for the distributee;

(ii) To the custodian of the distributee under the Uniform Transfers to Minors Act, Section 91-20-1 et seq.; or

(iii) If there is no guardian, custodian, or custodial trustee, to a relative or other person having physical custody of the distributee;

(r) Defend an action, claim, or proceeding in any jurisdiction for the protection of the conservatorship estate or the conservator in the performance of the conservator's duties;

(s) Structure the finances of the ward to establish eligibility for a public benefit, including by making gifts consistent with the ward's preferences, values, and prior directions, if the conservator's action does not jeopardize the ward's welfare and otherwise is consistent with the conservator's duties; and

(t) Execute and deliver any instrument that will accomplish or facilitate the exercise of a power of the conservator.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020.

§ 93-20-422. Distribution from conservatorship estate.

Except as otherwise provided in Section 93-20-414 or qualified or limited in the court's order of appointment and stated in the letters of conservatorship, and unless contrary to a conservator's plan under Section 93-20-419, the conservator may expend or distribute income or principal of the conservatorship estate for the support, care, education, health, or welfare of the ward or an individual who is in fact dependent on the ward, including the payment of child or spousal support, without specific court authorization or confirmation in accordance with the following rules:

(a) The conservator shall consider a recommendation relating to the appropriate standard of support, care, education, health, or welfare for the ward or individual who is dependent on the ward, made by a guardian for the ward, if any, and, if the ward is a minor, a recommendation made by a parent of the minor. If the minor has a father or mother, the court shall determine whether the expense of maintaining and educating the minor shall be borne by the ward's estate.

(b) The conservator acting in compliance with the conservator's duties under Section 93-20-418 is not liable for an expenditure or distribution made based on a recommendation under paragraph (a) unless the conservator knows the expenditure or distribution is not in the best interest of the ward.

(c) In making an expenditure or distribution under this section, the conservator must consider:

(i) The size of the conservatorship estate, the estimated duration of the conservatorship, and the likelihood the ward, at some future time, may be fully self-sufficient and able to manage the individual's financial affairs and the conservatorship estate;

(ii) The accustomed standard of living of the ward and individual who is dependent on the ward;

(iii) Other funds or sources used for the support of the ward; and

(iv) The preferences, values, and prior directions of the ward.

(d) Funds expended or distributed under this section may be paid by the conservator to any person, including the ward, as reimbursement for expenditures the conservator might have made, or in advance for services to be provided to the ward or individual who is dependent on the ward if it is reasonable to expect the services will be performed and advance payment is customary or reasonably necessary under the circumstances.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020.

JUDICIAL DECISIONS

1. In general.

Because the chancery court had no legal basis to award attorneys' fees to the ward's sons for services rendered after the termination of the ward's conservatorship, the court abused its discretion in sua sponte ordering that the attorneys' fees of the sons were be paid out of the ward's funds held in the registry of the court. Young v. Kennedy (In re Conservatorship of Young), 293 So. 3d 212, 2020 Miss. LEXIS 17 (Miss. 2020).

§ 93-20-423. Conservator's report and accounting; monitoring.

(1) Except as otherwise provided under subsection (11), a conservator must file a report in a record regarding the administration of the conservatorship estate with the court annually unless the court otherwise directs, if provided by will, or made necessary by resignation or removal, or termination of the conservatorship. A conservator must petition the court for approval of a report filed under this section. The court, after review, may approve the report.

(2) A report under subsection (1) must state or contain:

(a) An accounting that lists property included in the conservatorship estate and the receipts, disbursements, liabilities, and distributions during the period for which the report is made;

(b) A list of the services provided to the ward;

(c) A statement whether the conservator has deviated from the plan and, if so, how the conservator has deviated and why;

(d) A recommendation as to the need for continued conservatorship and any recommended change in the scope of the conservatorship;

(e) Anything of more than de minimis value which the conservator, any individual who resides with the conservator, or the spouse, parent, child, or sibling of the conservator has received from a person providing goods or services to the ward; and

(f) Any business relationship the conservator has with a person the conservator has paid or that has benefited from the property of the ward.

(3) The court, in its discretion, may request a copy of the most recent reasonably available financial statements evidencing the status of bank accounts, investment accounts, and mortgages or other debts of the ward with all but the last four (4) digits of the account numbers and social security number redacted;

(4) The court may appoint a guardian ad litem to review a report under this section or a conservator's plan under Section 93-20-419, to interview the ward or conservator, or to investigate any other matter involving the conservatorship. In connection with the report, the court may order the conservator to submit the conservatorship estate to appropriate examination in a manner the court directs.

(5) Reasonable notice of the filing under this section of a conservator's report, together with a copy of the report, must be provided to the ward, a person entitled to notice under Section 93-20-411(5) or a court order, and other persons the court determines. The notice and report must be given not later than fourteen (14) days after filing.

(6) The court may establish procedures for monitoring a report submitted under this section and review each report at least annually unless otherwise directed by the court. The court must consider whether:

(a) The reports provide sufficient information to establish that the conservator has complied with the conservator's duties;

(b) The conservatorship should continue; and

(c) The conservator's requested fees, if any, should be approved.

(7) If the court determines there is reason to believe a conservator has not complied with the conservator's duties or the conservatorship should not continue, the court:

(a) Shall notify the ward, the conservator, and any other person entitled to notice under Section 93-20-411(5) or a court order;

(b) May require additional information from the conservator;

(c) May appoint a guardian ad litem to interview the ward or conservator or investigate any matter involving the conservatorship; and

(d) Consistent with Sections 93-20-429 and 93-20-430, may hold a hearing to consider removal of the conservator, termination of the conservatorship, or a change in the powers granted to the conservator or terms of the conservatorship.

(8) If the court has reason to believe fees requested by a conservator are not reasonable, the court shall hold a hearing to determine whether to adjust the requested fees.

(9) An order may be entered, after notice and consideration by the court, approving a report of a conservator filed under this section.

(10) A conservator may seek an order, after notice and hearing, approving a report filed under this section that discharges the conservator from all liabilities, claims, and causes of action by a person given notice of the report and the hearing as to a matter adequately disclosed in the report.

(11) When the funds and personal property of the ward do not exceed the sum or value of Ten Thousand Dollars ($10,000.00) and there is no foreseeable prospect of further receipt to come into the hands of the conservator other than interest thereon, or in conservatorships in which the only funds on hand or to be received by the guardian are funds paid or to be paid by a government agency providing protective services to adults or children for the benefit of the ward, the chancery court or chancellor in vacation, for good cause shown, in the chancellor's discretion and upon being satisfied it is to the best interest and welfare of the ward, may authorize the guardian to dispense with further annual accounts, except for a final account.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020.

§ 93-20-424. Attempted transfer of property by the ward.

(1) The interest of a ward in property included in the conservatorship estate is not transferrable or assignable by the ward and is not subject to levy, garnishment, or similar process for claims against the ward unless allowed under Section 93-20-427.

(2) If a ward enters into a contract after the right to enter the contract has been delegated to another by the court, the contract is void against the ward and the ward's property but is enforceable against the person that contracted with the ward.

(3) A person other than the conservator that deals with a ward with respect to property included in the conservatorship estate is entitled to protection provided by law of this state other than this chapter.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020.

§ 93-20-425. Transaction involving conflict of interest.

A transaction involving a conservatorship estate which is affected by a substantial conflict between the conservator's fiduciary duties and personal interests is voidable unless the transaction is authorized by court order after notice to persons entitled to notice under Section 93-20-411(5) or a court order. A transaction affected by a substantial conflict includes a sale, encumbrance, or other transaction involving the conservatorship estate entered into by the conservator, an individual with whom the conservator resides, the spouse, descendant, sibling, or attorney of the conservator, or a corporation or other enterprise in which the conservator has a substantial beneficial interest.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020.

§ 93-20-426. Protection of person dealing with conservator.

(1) A person that assists or deals with a conservator in good faith and for value in any transaction, other than a transaction requiring a court order under Section 93-20-414, is protected as though the conservator properly exercised any power in question. Mere knowledge by a person that the person is dealing with a conservator does not require the person to inquire into the existence of authority of the conservator or the propriety of the conservator's exercise of authority, but restrictions on authority stated in letters of conservatorship, or otherwise provided by law, are effective as to the person. A person that pays or delivers property to a conservator is not responsible for proper application of the property.

(2) Protection under subsection (1) extends to a procedural irregularity or jurisdictional defect in the proceeding leading to the issuance of letters of conservatorship and does not substitute for protection for a person that assists or deals with a conservator provided by comparable provisions in law of this state other than this chapter relating to a commercial transaction or simplifying a transfer of securities by a fiduciary.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020.

§ 93-20-427. Presentation and allowance of claim.

(1) A conservator may pay, or secure by encumbering property included in the conservatorship estate, a claim against the conservatorship estate or the

ward arising before or during the conservatorship, on presentation and allowance in accordance with the priorities under subsection (5) or (6). A claimant may present a claim by filing the claim with the court, in a form acceptable to the court, and sending or delivering a copy of the claim to the conservator.

(2) A presented claim is allowed if it is not disallowed in whole or in part by the conservator in a record sent or delivered to the claimant not later than ninety (90) days after its presentation. Before payment, the conservator may change an allowance of the claim to a disallowance in whole or in part, but not after allowance under a court order or order directing payment of the claim. Presentation of a claim tolls the running of a statute of limitations that has not expired relating to the claim until thirty (30) days after disallowance of the claim.

(3) A claimant whose claim has not been paid may petition the court to determine the claim at any time before it is barred by a statute of limitations, and the court may order its allowance, payment, or security by encumbering property included in the conservatorship estate. If a proceeding is pending against the ward at the time of appointment of the conservator or is initiated after the appointment, the moving party must give the conservator notice of the proceeding if it could result in creating a claim against the conservatorship estate.

(4) If a conservatorship estate is likely to be exhausted before all existing claims are paid, the provisions of the law on proceedings to insolvency and distribution of assets of insolvent estates shall, as far as applicable and not otherwise provided, be observed and enforced.

(5) When the claims are established and the amount of assets ascertained, the court shall adjudge the pro rata share of each claimant, deducting first the preference claims in the following order:

(a) Costs and expenses of administration;

(b) A claim of the federal or state government having priority under law other than this article;

(c) A claim incurred by the conservator for support, care, education, health, or welfare previously provided to the ward or an individual who is in fact dependent on the ward;

(d) A claim arising before the conservatorship; and

(e) All other claims.

(6) Preference may not be given in the payment of a claim under subsection (5) over another claim of the same class. A claim due and payable may not be preferred over a claim not due unless:

(a) Doing so would leave the conservatorship estate without sufficient funds to pay the basic living and health-care expenses of the ward; and

(b) The court authorizes the preference under Section 93-20-414(1)(h).

(7) If assets of a conservatorship estate are adequate to meet all existing claims, the court, acting in the best interest of the ward, may order the conservator to grant a security interest in the conservatorship estate for payment of a claim at a future date.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020.

§ 93-20-428. Personal liability of conservator.

(1) Except as otherwise agreed by a conservator, the conservator is not personally liable on a contract properly entered into in a fiduciary capacity in the course of administration of the conservatorship estate unless the conservator fails to reveal the conservator's representative capacity in the contract or before entering into the contract.

(2) A conservator may be personally liable for an obligation arising from control of property of the conservatorship estate or an act or omission occurring in the course of administration of the conservatorship estate only if the conservator is personally grossly negligent or in breach of fiduciary duty.

(3) A claim based on a contract entered into by a conservator in a fiduciary capacity, an obligation arising from control of property included in the conservatorship estate, or a tort committed in the course of administration of the conservatorship estate may be asserted against the conservatorship estate in a proceeding against the conservator in a fiduciary capacity, whether or not the conservator is personally liable for the claim.

(4) A question of liability between a conservatorship estate and the conservator personally may be determined in a proceeding for accounting, surcharge, or indemnification or another appropriate proceeding or action.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020.

§ 93-20-429. Removal of conservator; appointment of successor.

(1) The court may remove a conservator for failure to perform the conservator's duties or other good cause and appoint a successor conservator to assume the duties of the conservator.

(2) The court must hold a hearing to determine whether to remove a conservator and appoint a successor on:

(a) A petition of the ward, conservator, or person interested in the welfare of the ward that contains allegations which, if true, would support a reasonable belief that removal of the conservator and appointment of a successor may be appropriate, but the court may decline to hold a hearing if a petition based on the same or substantially similar facts was filed during the preceding six (6) months;

(b) Communication from the ward, conservator, or person interested in the welfare of the ward which supports a reasonable belief that removal of the conservator and appointment of a successor may be appropriate; or

(c) Determination by the court that a hearing would be in the best interest of the ward.

(3) Notice of a petition under subsection (2)(a) must be given to the ward, the conservator, and any other person the court determines.

(4) A ward who seeks to remove the conservator and have a successor appointed has the right to choose an attorney to represent the ward in this

matter. If the ward is not represented by an attorney, the court may appoint an attorney under the same conditions as in Section 93-20-406. The court may award reasonable attorney's fees to the attorney as provided in Section 93-20-118.

(5) In selecting a successor conservator, the court must follow the priorities under Section 93-20-410.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020.

§ 93-20-430. Termination or modification of conservatorship.

(1) A conservatorship must be terminated when the minor becomes an adult, becomes emancipated, or dies; the termination must comply with Section 93-20-423, but a conservatorship may continue into adulthood when the court finds the ward qualifies for conservatorship as an adult under the provisions of subsections (5) and (6).

(2) A ward, the conservator, or a person interested in the welfare of the individual may petition for:

(a) Termination of the conservatorship on the ground that a basis for appointment under Section 93-20-401 does not exist or termination would be in the best interest of the ward or for other good cause; or

(b) Modification of the conservatorship on the ground that the extent of protection or assistance granted is not appropriate or for other good cause shown.

(3) The court must hold a hearing to determine whether termination or modification of a conservatorship is appropriate on:

(a) A petition that contains allegations which, if true, would support a reasonable belief that termination or modification of the conservatorship may be appropriate, but the court may decline to hold a hearing if a petition based on the same or substantially similar facts was filed within the preceding six (6) months;

(b) A communication from the ward, conservator, or person interested in the welfare of the ward which supports a reasonable belief that termination or modification of the conservatorship may be appropriate, including because the functional needs of the ward or supports or services available to the ward have changed;

(c) A report from a guardian or conservator which indicates that termination or modification may be appropriate because the functional needs or supports or services available to the ward have changed or other less restrictive alternative is available; or

(d) A determination by the court that a hearing would be in the best interest of the ward.

(4) Notice of a petition under this section must be given to the ward, the conservator, and any other person the court determines.

(5) On presentation of prima facie evidence for termination of a conservatorship, the court must order termination unless it is proven that a basis for appointment of a conservator under Section 93-20-401 exists.

(6) The court must modify the powers granted to a conservator if the powers are excessive or inadequate due to a change in the abilities or limitations of the ward, the ward's supports, or other circumstances.

(7) Unless the court otherwise orders for good cause, before terminating a conservatorship, the court shall follow the same procedures to safeguard the rights of the ward which apply to a petition for conservatorship.

(8) A ward who seeks to terminate or modify the terms of the conservatorship has the right to choose an attorney to represent the ward in this matter. If the ward is not represented by an attorney, the court may appoint an attorney under the same conditions as in Section 93-20-406. The court may award reasonable attorney's fees to the attorney as provided in Section 93-20-118.

(9) On termination of a conservatorship other than by reason of the death of the ward, property of the conservatorship estate passes to the ward. The order of termination must direct the conservator to file a final report and petition for discharge on approval by the court of the final report.

(10) If a ward dies testate, the conservator must deliver the will to the named representative and certify that delivery to the court. If the ward dies intestate, Section 91-7-68 governs.

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020.

UNDER CURRENT LAW.

1. In general.

Chancellor erred by continuing to hold in the registry of the court and by refusing to release the entirety of the ward's funds back to the ward after the conservatorship was terminated because at the point when the conservatorship was terminated by agreed judgment, no one except for the ward had the right to say or agree to what the ward would or could do with the ward's money. Young v. Kennedy (In re Conservatorship of Young), 293 So. 3d 212, 2020 Miss. LEXIS 17 (Miss. 2020).

§ 93-20-431. Transfer for benefit of minor without appointment of conservator.

(1) Unless a person required to transfer a liquidated sum certain under a banking provision, a contract for payment or under a judgment or decree of a court, or other property to a minor knows that a conservator for the minor has been appointed or a proceeding is pending for conservatorship:

(a) The person may transfer a liquidated sum certain or property of certain value not exceeding Twenty-five Thousand Dollars ($25,000.00) in a twelve-month period to:

(i) A person who has care or custody of the minor and with whom the minor resides;

(ii) A guardian for the minor;

(iii) A custodian under the Uniform Transfers to Minors Act, Section 91-20-1 et seq.; or

(iv) A financial institution as a deposit in an account or certificate solely in the name of the minor; notice of the deposit must be given to the minor; or

(v) An Achieving a Better Life Experience (ABLE) account.

(b) The person must seek chancery court approval if the sum of money or value of property that may be due to the ward is not a liquidated sum certain or property of certain value under a banking provision, a contract for payment, or under a judgment, order or decree of a court, and the chancery court before ordering the money paid or personal property delivered must fully investigate the matter and satisfy itself by evidence or otherwise that the proposed sum of money to be paid or property to be delivered because of any claim of the ward whatsoever, whether arising ex delicto or ex contractu, is a fair settlement of the claim of the ward and that it is in the best interest of the ward that the settlement be made or the personal property be delivered to the ward. Upon making that determination, the chancery court may order that the money or personal property be accepted by the ward and paid or delivered by the party owing the money or in possession of the property as authorized by the decree of the court, and compliance with the order shall acquit and release the person so paying or delivering the same. The person who receives the money or property of a ward under the order thereby becomes amenable to the court for the disposition of it for the use and benefit of the ward, but is not required to furnish security therefor absent order of the chancery court.

(2) A person that transfers funds or other property under this section is not responsible for its proper application.

(3) A person that receives funds or other property for a minor under subsection (1)(a) or (b) may apply it only to the support, care, education, health, or welfare of the minor, and may not derive a personal financial benefit from it, except for reimbursement for necessary expenses. Funds not applied for these purposes must be preserved for the future support, care, education, health, or welfare of the minor, and the balance, if any, transferred to the minor when the minor becomes an adult or otherwise is emancipated.

(4) Contributions to an ABLE account, and the provisions for permissible disbursements from such account, are governed by 26 U.S.C. Section 529A and the terms of the applicable ABLE plan. The amount of annual contributions is subject to 26 U.S.C. Section 2503(b).

HISTORY: Laws, 2019, ch. 463, § 1, eff from and after January 1, 2020; Laws, 2020, ch. 344, § 28, eff from and after passage (approved June 23, 2020).

Amendment Notes — The 2020 amendment, effective June 23, 2020, in (1), rewrote the introductory paragraph, which read: "Unless a person required to transfer funds or other property to a minor knows that a conservator for the minor has been appointed or a proceeding is pending for conservatorship, the person may transfer an amount or value not exceeding Twenty-five Thousand Dollars ($25,000.00) in a twelve-month period to," added (a), redesignated former (a) through (e) as (i) through (v), and added (b).

CHAPTER 21.

PROTECTION FROM DOMESTIC ABUSE

Article 1. Protection from Domestic Abuse Law. 93-21-1
Article 3. Domestic Violence Shelters. 93-21-101

ARTICLE 1.

PROTECTION FROM DOMESTIC ABUSE LAW.

Sec.
93-21-5. Jurisdiction and venue.
93-21-7. Petition to seek domestic abuse protection order; proper forum for petition alleging domestic abuse; waiver of filing fees in domestic abuse cases.
93-21-13. Emergency domestic abuse protection order; duration of order; extension; entry of protection order into Mississippi Protection Order Registry; order effective in all U.S. states, territories and tribal lands.
93-21-15. Temporary domestic abuse protection orders; relief; duration; final domestic abuse protection order or consent agreements; provisions addressing custody, visitation or support of minor children; order to set forth findings of fact and provide details of acts restrained; order to be entered into Mississippi Protection Order Registry; modification, amendment or dissolution of order; order effective in all U.S. states, territories and tribal lands.
93-21-15.1. Appeal of temporary or final domestic abuse protection order.
93-21-16. Full faith and credit for certain protective orders issued in other jurisdictions.
93-21-21. Knowing violation of protection orders, court-approved consent agreements or bond conditions issued by Mississippi or foreign courts is misdemeanor or contempt; penalties.

§ 93-21-1. Short title.

OPINIONS OF THE ATTORNEY GENERAL

Sections 93-21-1 through 93-21-29 apply to actions that may be taken in order to assure the safety of individuals who may be the victims of domestic abuse. They are not meant for criminal charges of domestic assault. Aldridge, January 8, 1996, A.G. Op. #95-0862.

There is no requirement that a victim have a lawyer present before filing a petition seeking protection from abuse. Garber, Oct. 22, 2004, A.G. Op. 04-0527.

Form petitions, subpoenas, and orders have been developed specifically to meet the need of domestic violence victims in seeking protective orders. These forms are available from the office of the Attorney General or from the Mississippi Coalition Against Domestic Violence. Garber, Oct. 22, 2004, A.G. Op. 04-0527.

§ 93-21-3. Definitions.

JUDICIAL DECISIONS

1. Abuse.

Chancery court erred by granting a permanent restraining order under Miss. R. Civ. P. 65 without finding a girlfriend was entitled to relief under the Protection from Domestic Abuse Law (PDAL) because in the absence of a finding of abuse under the PDAL, there was no basis to grant permanent injunctive relief; the girlfriend alleged an independent legal right and action under the PDAL, and the chancery court had to decide whether she proved domestic abuse by a preponderance of the evidence. Waite v. Adkisson, 282 So. 3d 744, 2019 Miss. App. LEXIS 387 (Miss. Ct. App. 2019).

Protection from Domestic Abuse Law (PDAL) not only provides a right and cause of action but also a complete scheme for the issuance of injunctive relief in the form of emergency, temporary, and final domestic abuse protection orders; therefore, resorting to Miss. R. Civ. P. 65 is entirely unnecessary in the case of a petition filed under the PDAL. Waite v. Adkisson, 282 So. 3d 744, 2019 Miss. App. LEXIS 387 (Miss. Ct. App. 2019).

Chancery court properly dismissed a girlfriend's petition for a domestic-abuse protection order and assessed the filing fee to her because, while the parties were in a "dating relationship" and the occurrence of one or more of the listed acts constituting abuse was found, the statutory requirement of ongoing fear was not met inasmuch as the record showed that the boyfriend took no actions against the girlfriend after the incident. Alexis v. Black, 283 So. 3d 1105, 2019 Miss. LEXIS 399 (Miss. 2019).

OPINIONS OF THE ATTORNEY GENERAL

"Family or household member", as that term is used in Sections 97-3-7 and 99-3-7, includes individuals who are married, were married, or who live together in a relationship, although not married; further, it is not limited to a blood relationship and can relate to an in-law relationship or other relatives of one spouse living in the household; however, "boyfriend-girlfriend" (or any other variation of this) relationships are not included in the definition of "family or household member", unless the persons reside or resided together as spouses; finally, although not falling into the definition of "family or household member", if the individuals have a biological or legally adopted child between them, the relationship is also protected. Carrubba, Oct. 6, 2000, A.G. Op. #2000-0588.

§ 93-21-5. Jurisdiction and venue.

(1) The municipal, justice, county or chancery court, or a state military court as defined in Section 33-13-151, shall have jurisdiction over proceedings under this chapter as provided in this chapter. The petitioner's right to relief under this chapter shall not be affected by his leaving the residence or household to avoid further abuse.

(2) Venue shall be proper in any county or municipality where the respondent resides or in any county or municipality where the alleged abusive act or acts occurred. Any action that originates in state military court as defined in Section 33-13-151 alleged against a member of the Mississippi National Guard and brought in a state military court proceeding as defined in Section 33-13-151 shall be the sole province of the Mississippi National Guard, and venue shall only be proper for such action before a state military court as

defined in Section 33-13-151, and shall be subject to all the applicable laws, procedures, rules and/or regulations as set forth in Title 33. The provisions of this subsection shall not prohibit any person from bringing the same or similar action in municipal, justice, county or chancery court.

(3) If a petition for an order for protection from domestic abuse is filed in a court lacking proper venue, the court, upon objection of the respondent, shall transfer the action to the appropriate venue pursuant to other applicable law.

(4) A record shall be made of any proceeding in justice or municipal court that involves domestic abuse.

HISTORY: Laws, 1981, ch. 429, § 3; Laws, 2009, ch. 545, § 2; Laws, 2012, ch. 514, § 1, eff from and after July 1, 2012; Laws, 2020, ch. 463, § 1, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment, in (1), inserted "or a state military court as defined in Section 33-13-151"; in (2), added the last two sentences; and made a minor stylistic change.

§ 93-21-7. Petition to seek domestic abuse protection order; proper forum for petition alleging domestic abuse; waiver of filing fees in domestic abuse cases.

(1) Any person may seek a domestic abuse protection order for himself by filing a petition alleging abuse by the respondent. Any parent, adult household member, or next friend of the abused person may seek a domestic abuse protection order on behalf of any minor children or any person alleged to be incompetent by filing a petition with the court alleging abuse by the respondent. Cases seeking relief under this chapter shall be priority cases on the court's docket and the judge shall be immediately notified when a case is filed in order to provide for expedited proceedings.

(2) A petition seeking a domestic abuse protection order may be filed in any of the following courts: municipal, justice, county or chancery, or a state military court as defined in Section 33-13-151. A chancery court shall not prohibit the filing of a petition which does not seek emergency relief on the basis that the petitioner did not first seek or obtain temporary relief in another court. A petition requesting emergency relief pending a hearing shall not be filed in chancery court unless specifically permitted by the chancellor under the circumstances or as a separate pleading in an ongoing chancery action between the parties. Nothing in this section shall:

(a) Be construed to require consideration of emergency relief by a chancery court; or

(b) Preclude a chancery court from entering an order of emergency relief.

(3) The petitioner in any action brought pursuant to this chapter shall not bear the costs associated with its filing or the costs associated with the issuance or service of any notice of a hearing to the respondent, issuance or service of an order of protection on the respondent, or issuance or service of a warrant or witness subpoena. If the court finds that the petitioner is entitled

to an order protecting the petitioner from abuse, the court shall be authorized to assess all costs including attorney's fees of the proceedings to the respondent. The court may assess costs including attorney's fees to the petitioner only if the allegations of abuse are determined to be without merit and the court finds that the petitioner is not a victim of abuse as defined by Section 93-21-3.

HISTORY: Laws, 1981, ch. 429, § 4; Laws, 2001, ch. 382, § 1; Laws, 2007, ch. 589, § 2; Laws, 2009, ch. 433, § 1; Laws, 2009, ch. 545, § 3; Laws, 2012, ch. 514, § 2, eff from and after July 1, 2012; Laws, 2020, ch. 463, § 2, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment, in (2), inserted "or a state military court as defined in Section 33-13-151."

JUDICIAL DECISIONS

ANALYSIS

2. Finding of abuse.
3. Construction.
4. Fees properly assessed.

2. Finding of abuse.

Chancery court erred by granting a permanent restraining order under Miss. R. Civ. P. 65 without finding a girlfriend was entitled to relief under the Protection from Domestic Abuse Law (PDAL) because in the absence of a finding of abuse under the PDAL, there was no basis to grant permanent injunctive relief; the girlfriend alleged an independent legal right and action under the PDAL, and the chancery court had to decide whether she proved domestic abuse by a preponderance of the evidence. Waite v. Adkisson, 282 So. 3d 744, 2019 Miss. App. LEXIS 387 (Miss. Ct. App. 2019).

3. Construction.

Protection from Domestic Abuse Law (PDAL) not only provides a right and cause of action but also a complete scheme for the issuance of injunctive relief in the form of emergency, temporary, and final domestic abuse protection orders; therefore, resorting to Miss. R. Civ. P. 65 is entirely unnecessary in the case of a petition filed under the PDAL. Waite v. Adkisson, 282 So. 3d 744, 2019 Miss. App. LEXIS 387 (Miss. Ct. App. 2019).

4. Fees properly assessed.

Chancery court properly dismissed a girlfriend's petition for a domestic-abuse protection order and assessed the filing fee to her because, while the parties were in a "dating relationship" and the occurrence of one or more of the listed acts constituting abuse was found, the statutory requirement of ongoing fear was not met inasmuch as the record showed that the boyfriend took no actions against the girlfriend after the incident. Alexis v. Black, 283 So. 3d 1105, 2019 Miss. LEXIS 399 (Miss. 2019).

OPINIONS OF THE ATTORNEY GENERAL

A petition filed with the justice court seeking a protective order should be filed and docketed as a civil case; in addition, the abused shall not bear the costs associated with the petition or service of warrants, unless the court finds that the allegations of abuse are false. Aldridge, May 5, 2003, A.G. Op. 03-0199.

Any protective order issued by a justice court is temporary and shall not exceed ten days during which time the petitioner may seek a protective order from chancery court. Aldridge, May 5, 2003, A.G. Op. 03-0199.

An indigent domestic violence victim may file a temporary ex parte restraining order without paying the $25.00 civil process fee to have the defendant served. Adams, Aug. 1, 2003, A.G. Op. 03-0368.

A person seeking a protective order

from domestic violence is not required to pay any fees at the time of filing of the petition and there is no requirement that a pauper's oath or other statement of financial ability be filed. Garber, Oct. 22, 2004, A.G. Op. 04-0527.

§ 93-21-9. Contents of petition.

JUDICIAL DECISIONS

ANALYSIS

1. Finding of abuse.
2. Construction.

1. Finding of abuse.

Chancery court erred by granting a permanent restraining order under Miss. R. Civ. P. 65 without finding a girlfriend was entitled to relief under the Protection from Domestic Abuse Law (PDAL) because in the absence of a finding of abuse under the PDAL, there was no basis to grant permanent injunctive relief; the girlfriend alleged an independent legal right and action under the PDAL, and the chancery court had to decide whether she proved domestic abuse by a preponderance of the evidence. Waite v. Adkisson, 282 So. 3d 744, 2019 Miss. App. LEXIS 387 (Miss. Ct. App. 2019).

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Protection from Domestic Abuse Law (PDAL) not only provides a right and cause of action but also a complete scheme for the issuance of injunctive relief in the form of emergency, temporary, and final domestic abuse protection orders; therefore, resorting to Miss. R. Civ. P. 65 is entirely unnecessary in the case of a petition filed under the PDAL. Waite v. Adkisson, 282 So. 3d 744, 2019 Miss. App. LEXIS 387 (Miss. Ct. App. 2019).

§ 93-21-11. Notice and hearing.

OPINIONS OF THE ATTORNEY GENERAL

The Court hearing a domestic violence charge could prohibit the defendant from possessing a handgun if, pursuant to Miss. Code Ann. § 93-21-11, the Court deems it necessary to protect the victim(s). Where a handgun was stolen from the defendant, recovered by a Police Department, and its return was requested by the defendant, the Department may ask the Court for such an order and if granted, may refuse to return the handgun to the defendant. Dawson, Jr., March 9, 2007, A.G. Op. #07-00101, 2007 Miss. AG LEXIS 89.

§ 93-21-13. Emergency domestic abuse protection order; duration of order; extension; entry of protection order into Mississippi Protection Order Registry; order effective in all U.S. states, territories and tribal lands.

(1)(a) The court in which a petition seeking emergency relief pending a hearing is filed must consider all such requests in an expedited manner and shall not refer or direct the matter to be sent to another court. The court may issue an emergency domestic abuse protection order without prior notice to the respondent upon good cause shown by the petitioner. Immediate and present danger of abuse to the petitioner, any minor children or any person alleged to be incompetent shall constitute good cause for issuance of an emergency domestic abuse protection order. The respondent shall be provided with notice of the entry of any emergency domestic abuse protection order issued by the court by personal service of process.

(b) A court granting an emergency domestic abuse protection order may grant relief as provided in Section 93-21-15(1)(a).

(c) An emergency domestic abuse protection order shall be effective for ten (10) days, or until a hearing may be held, whichever occurs first. If a hearing under this subsection (1) is continued, the court may grant or extend the emergency order as it deems necessary for the protection of the abused person. A continuance under this subsection (1)(c) shall be valid for no longer than twenty (20) days.

(2) The Attorney General, in cooperation with the Mississippi Supreme Court and the Mississippi Judicial College, shall develop standardized forms for emergency domestic abuse protection orders. Use of the standardized forms in protection order proceedings pursuant to this chapter shall be fully implemented by all courts no later than July 1, 2015. However, in any criminal prosecution or contempt proceeding for a violation of a domestic abuse protection order, it shall not be a defense that the order was not issued on the standardized form.

(3) Upon issuance of any protection order by the court, the order shall be entered into the Mississippi Protection Order Registry by the clerk of the court pursuant to Section 93-21-25, and a copy provided to the sheriff's department in the county of the court of issuance.

(4) An emergency domestic abuse protection order issued under this section is effective in this state, in all other states, and in United States territories and tribal lands. A court shall not limit the scope of a protection order to the boundaries of the State of Mississippi or to the boundaries of a municipality or county within the State of Mississippi.

HISTORY: Laws, 1981, ch. 429, § 7; Laws, 1989, ch. 353, § 2; Laws, 1995, ch. 320, § 1; Laws, 1995, ch. 569, § 2; Laws, 1998, ch. 471, § 2; Laws, 2002, ch. 337, § 1; Laws, 2004, ch. 566, § 10; Laws, 2007, ch. 589, § 4; Laws, 2009, ch. 545, § 6; Laws, 2012, ch. 514, § 3, eff from and after July 1, 2012; Laws, 2019, ch. 460, § 1, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment added "and shall not refer or direct the matter to be sent to another court" in the first sentence of (1)(a); and rewrote (4), which read: "Any person aggrieved by the decision of a municipal or justice court judge to issue an emergency domestic abuse protection order or to deny issuance of an emergency domestic protection order shall be entitled to request a de novo review by the chancery or county court. All parties shall be advised of the procedure for seeking a de novo hearing."

JUDICIAL DECISIONS

ANALYSIS

1. Finding of abuse.
2. Construction.

1. Finding of abuse.

Chancery court erred by granting a permanent restraining order under Miss. R. Civ. P. 65 without finding a girlfriend was entitled to relief under the Protection from Domestic Abuse Law (PDAL) because in the absence of a finding of abuse under the PDAL, there was no basis to grant permanent injunctive relief; the girlfriend alleged an independent legal right and action under the PDAL, and the chancery court had to decide whether she proved domestic abuse by a preponderance of the evidence. Waite v. Adkisson, 282 So. 3d 744, 2019 Miss. App. LEXIS 387 (Miss. Ct. App. 2019).

2. Construction.

Protection from Domestic Abuse Law (PDAL) not only provides a right and cause of action but also a complete scheme for the issuance of injunctive relief in the form of emergency, temporary, and final domestic abuse protection orders; therefore, resorting to Miss. R. Civ. P. 65 is entirely unnecessary in the case of a petition filed under the PDAL. Waite v. Adkisson, 282 So. 3d 744, 2019 Miss. App. LEXIS 387 (Miss. Ct. App. 2019).

OPINIONS OF THE ATTORNEY GENERAL

Any protective order issued by a justice court is temporary and shall not exceed ten days during which time the petitioner may seek a protective order from chancery court. Aldridge, May 5, 2003, A.G. Op. 03-0199.

A petition filed with the justice court seeking a protective order should be filed and docketed as a civil case; in addition, the abused shall not bear the costs associated with the petition or service of warrants, unless the court finds that the allegations of abuse are false. Aldridge, May 5, 2003, A.G. Op. 03-0199.

§ 93-21-15. Temporary domestic abuse protection orders; relief; duration; final domestic abuse protection order or consent agreements; provisions addressing custody, visitation or support of minor children; order to set forth findings of fact and provide details of acts restrained; order to be entered into Mississippi Protection Order Registry; modification, amendment or dissolution of order; order effective in all U.S. states, territories and tribal lands.

(1)(a) After a hearing is held as provided in Section 93-21-11 for which notice and opportunity to be heard has been granted to the respondent, and upon a finding that the petitioner has proved the existence of abuse by a preponderance of the evidence, the municipal and justice courts shall be empowered to grant a temporary domestic abuse protection order to bring about a cessation of abuse of the petitioner, any minor children, or any person alleged to be incompetent. The relief the court may provide includes, but is not limited to, the following:

(i) Directing the respondent to refrain from abusing the petitioner, any minor children, or any person alleged to be incompetent;

(ii) Prohibiting or limiting respondent's physical proximity to the abused or other household members as designated by the court, including residence and place of work;

(iii) Prohibiting or limiting contact by the respondent with the abused or other household members designated by the court, whether in person, by telephone or by other electronic communication;

(iv) Granting possession to the petitioner of the residence or household to the exclusion of the respondent by evicting the respondent or restoring possession to the petitioner, or both; or

(v) Prohibiting the transferring, encumbering or otherwise disposing of property mutually owned or leased by the parties, except when in the ordinary course of business.

(b) The duration of any temporary domestic abuse protection order issued by a municipal or justice court shall not exceed thirty (30) days. However, if the party to be protected and the respondent do not have minor children in common, the duration of the temporary domestic abuse protection order may exceed thirty (30) days but shall not exceed one (1) year.

(c) Procedures for an appeal of the issuance of a temporary domestic abuse protection order are set forth in Section 93-21-15.1.

(2)(a) After a hearing is held as provided in Section 93-21-11 for which notice and opportunity to be heard has been granted to the respondent, and upon a finding that the petitioner has proved the existence of abuse by a preponderance of the evidence, the chancery or county court shall be empowered to grant a final domestic abuse protection order or approve any consent agreement to bring about a cessation of abuse of the petitioner, any minor children, or any person alleged to be incompetent. In granting a final domestic abuse protection order, the chancery or county court may provide for relief that includes, but is not limited to, the following:

(i) Directing the respondent to refrain from abusing the petitioner, any minor children, or any person alleged to be incompetent;

(ii) Granting possession to the petitioner of the residence or household to the exclusion of the respondent by evicting the respondent or restoring possession to the petitioner, or both;

(iii) When the respondent has a duty to support the petitioner, any minor children, or any person alleged to be incompetent living in the residence or household and the respondent is the sole owner or lessee, granting possession to the petitioner of the residence or household to the exclusion of the respondent by evicting the respondent or restoring possession to the petitioner, or both, or by consent agreement allowing the respondent to provide suitable, alternate housing;

(iv) Awarding temporary custody of or establishing temporary visitation rights with regard to any minor children or any person alleged to be incompetent, or both;

(v) If the respondent is legally obligated to support the petitioner, any minor children, or any person alleged to be incompetent, ordering the respondent to pay temporary support for the petitioner, any minor children, or any person alleged to be incompetent;

(vi) Ordering the respondent to pay to the abused person monetary compensation for losses suffered as a direct result of the abuse, including, but not limited to, medical expenses resulting from such abuse, loss of earnings or support, out-of-pocket losses for injuries sustained, moving expenses, a reasonable attorney's fee, or any combination of the above;

(vii) Prohibiting the transferring, encumbering, or otherwise disposing of property mutually owned or leased by the parties, except when in the ordinary course of business;

(viii) Prohibiting or limiting respondent's physical proximity to the abused or other household members designated by the court, including residence, school and place of work;

(ix) Prohibiting or limiting contact by the respondent with the abused or other household members designated by the court whether in person, by telephone or by electronic communication; and

(x) Ordering counseling or professional medical treatment for the respondent, including counseling or treatment designed to bring about the cessation of domestic abuse.

(b) Except as provided below, a final domestic abuse protection order issued by a chancery or county court under the provisions of this chapter shall be effective for such time period as the court deems appropriate. The expiration date of the order shall be clearly stated in the order.

(c) Temporary provisions addressing temporary custody, visitation or support of minor children contained in a final domestic abuse protection order issued by a chancery or county court shall be effective for one hundred eighty (180) days. A party seeking relief beyond that period must initiate appropriate proceedings in the chancery court of appropriate jurisdiction. If at the end of the one-hundred-eighty-day period, neither party has initiated such proceedings, the custody, visitation or support of minor children will revert to the chancery court order addressing such terms that was in effect at the time the domestic abuse protection order was granted. The chancery court in which custody, visitation or support proceedings have been initiated may provide for any temporary provisions addressing custody, visitation or support as the court deems appropriate.

(3) Every domestic abuse protection order issued pursuant to this section shall set forth the reasons for its issuance, shall contain specific findings of fact regarding the existence of abuse, shall be specific in its terms and shall describe in reasonable detail the act or acts to be prohibited. No mutual protection order shall be issued unless that order is supported by an independent petition by each party requesting relief pursuant to this chapter, and the order contains specific findings of fact regarding the existence of abuse by each party as principal aggressor, and a finding that neither party acted in self-defense.

(4) The Attorney General, in cooperation with the Mississippi Supreme Court and the Mississippi Judicial College, shall develop standardized forms for temporary and final domestic abuse protection orders. The use of standardized forms in protection order proceedings pursuant to this chapter shall be fully implemented by all courts no later than July 1, 2015. However, in any criminal prosecution or contempt proceeding for a violation of a domestic abuse protection order, it shall not be a defense that the order was not issued on the standardized form.

(5) Upon issuance of any protection order by the court, the order shall be entered in the Mississippi Protection Order Registry by the clerk of the court

pursuant to Section 93-21-25, and a copy shall be provided to the sheriff's department in the county of the court of issuance.

(6) Upon subsequent petition by either party and following a hearing of which both parties have received notice and an opportunity to be heard, the court may modify, amend, or dissolve a domestic abuse protection order previously issued by that court.

(7) A domestic abuse protection order issued under this section is effective in this state, in all other states, and in United States territories and tribal lands. A court shall not limit the scope of a protection order to the boundaries of the State of Mississippi or to the boundaries of a municipality or county within the State of Mississippi.

(8) Procedures for an appeal of the issuance or denial of a final domestic abuse protection order are set forth in Section 93-21-15.1.

HISTORY: Laws, 1981, ch. 429, § 8; Laws, 2002, ch. 337, § 2; Laws, 2007, ch. 589, § 5; Laws, 2009, ch. 545, § 7; Laws, 2012, ch. 514, § 4; Laws, 2014, ch. 463, § 2, eff from and after July 1, 2014; Laws, 2019, ch. 460, § 2, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment rewrote (1)(c), which read: "Any person aggrieved by the decision of a municipal or justice court judge to issue a temporary domestic abuse protection order or to deny such an order shall be entitled to request a de novo review by the chancery or county court. All parties shall be advised of the procedure for seeking a de novo hearing"; and added (7) and (8).

JUDICIAL DECISIONS

1. In general.

It was error to dismiss an alleged abuse victim's damages complaint against an alleged abuser on res judicata grounds because (1) a domestic abuse protection order the victim had obtained in justice court was only temporary, as a justice court did not have jurisdiction to grant a permanent order, so no final judgment required to apply res judicata was entered, and (2) there was no subject matter identity between the protection order proceeding and the damages complaint, as a justice court had no authority to award damages. Griffin v. Adams, 291 So. 3d 825, 2020 Miss. App. LEXIS 52 (Miss. Ct. App. 2020).

Chancery court erred by granting a permanent restraining order under Miss. R. Civ. P. 65 without finding a girlfriend was entitled to relief under the Protection from Domestic Abuse Law (PDAL) because in the absence of a finding of abuse under the PDAL, there was no basis to grant permanent injunctive relief; the girlfriend alleged an independent legal right and action under the PDAL, and the chancery court had to decide whether she proved domestic abuse by a preponderance of the evidence. Waite v. Adkisson, 282 So. 3d 744, 2019 Miss. App. LEXIS 387 (Miss. Ct. App. 2019).

Although the chancery court erred by granting a permanent restraining order under Miss. R. Civ. P. 65 without finding a girlfriend was entitled to relief under the Protection from Domestic Abuse Law (PDAL), judgment could not be rendered for the girlfriend because the chancery court, as the finder of fact, had to determine whether she was entitled to relief under the PDAL; therefore, the case was remanded for the chancery court to grant or deny the petition for a protection order under the PDAL. Waite v. Adkisson, 282 So. 3d 744, 2019 Miss. App. LEXIS 387 (Miss. Ct. App. 2019).

Protection from Domestic Abuse Law (PDAL) not only provides a right and cause of action but also a complete scheme for the issuance of injunctive relief in the form of emergency, temporary, and final domestic abuse protection orders; therefore, resorting to Miss. R. Civ. P. 65 is entirely unnecessary in the case of a petition filed under the PDAL. Waite v. Adkisson, 282 So. 3d 744, 2019 Miss. App. LEXIS 387 (Miss. Ct. App. 2019).

§ 93-21-15.1. Appeal of temporary or final domestic abuse protection order.

(1)(a) **De novo appeal.** Any party aggrieved by the decision of a municipal or justice court judge to issue a temporary domestic abuse protection order has the right of a trial de novo on appeal in the chancery court having jurisdiction. The trial de novo shall be held within ten (10) days of the filing of a notice of appeal. All such appeals shall be priority cases and the judge must be immediately notified when an appeal is filed in order to provide for expedited proceedings. The appeal will proceed as if a petition for an order of protection from domestic abuse had been filed in the chancery court. Following the trial de novo, if the petitioner has proved the existence of abuse by a preponderance of the evidence, the chancery court may grant a final domestic abuse protection order. In granting a final domestic abuse protection order, the chancery court may provide for relief that includes, but is not limited to, the relief set out in Section 93-21-15(2).

(b) **Notice of appeal.** The party desiring to appeal a decision from municipal or justice court must file a written notice of appeal with the chancery court clerk within ten (10) days of the issuance of a domestic abuse protection order. In all de novo appeals, the notice of appeal and payment of costs must be simultaneously filed and paid with the chancery clerk. Costs for an appeal by trial de novo shall be calculated as specified in subsection (4) of this section. The written notice of appeal must specify the party or parties taking the appeal and must designate the judgment or order from which the appeal is taken. A copy of the notice of appeal must be provided to all parties or their attorneys of record and to the clerk of the court from which the appeal is taken. A certificate of service must accompany the written notice of appeal. Upon receipt by the municipal or justice court of the notice of appeal, the clerk of the lower court shall immediately provide the entire court file to the chancery clerk.

(2)(a) **Appeals on the record.** Any party aggrieved by the decision of a county court to issue a final domestic abuse protection order or to deny such an order shall be entitled to an appeal on the record in the chancery court having jurisdiction. If the county court has issued a domestic abuse protection order as a temporary order instead of a final order as contemplated by Section 93-21-15(2), the chancery court shall permit the appeal on the record and shall treat the temporary order issued by the county court as a final order on the matter. The chancery court shall treat the appeal as a priority matter and render a decision as expeditiously as possible.

(b) **Notice of appeal and filing the record.** The party desiring to appeal a decision from county court must file a written notice of appeal with the chancery court clerk within ten (10) days of the issuance of a domestic abuse protection order. In all appeals, the notice of appeal and payment of costs, where costs are applicable, shall be simultaneously filed and paid with the chancery clerk. Costs shall be calculated as specified in subsection (4) of this section. The written notice of appeal must specify the party or parties taking the appeal and must designate the judgment or order from which the appeal is taken. A copy of the notice of appeal must be provided to all parties or their attorneys of record and to the clerk of the court from which the appeal is taken. A certificate of service must accompany the written notice of appeal. In all appeals in which the appeal is solely on the record, the record from the county court must be filed with the chancery clerk within thirty (30) days of filing of the notice of appeal. However, in cases involving a transcript, the court reporter or county court may request an extension of time. The court, on its own motion or on application of any party, may compel the compilation and transmission of the record of proceedings. Failure to file the record with the court clerk or to request the assistance of the court in compelling the same within thirty (30) days of the filing of the written notice of appeal may be deemed an abandonment of the appeal and the court may dismiss the same with costs to the appealing party or parties, unless a party or parties is exempt from costs as specified in subsection (4) of this section.

(c) **Briefs on appeal on the record.** Briefs, if any, filed in an appeal on the record must conform to the practice in the Supreme Court as to form and time of filing and service, except that the parties should file only an original and one (1) copy of each brief. The consequences of failure to timely file a brief will be the same as in the Supreme Court.

(3) **Supersedeas.** The perfecting of an appeal, whether on the record or by trial de novo, does not act as a supersedeas. Any domestic abuse protection order issued by a municipal, justice or county court shall remain in full force and effect for the duration of the appeal, unless the domestic abuse protection order otherwise expires due to the passage of time.

(4) **Cost bond.** In all appeals under this section, unless the court allows an appeal in forma pauperis or the appellant otherwise qualifies for exemption as specified in this subsection (4), the appellant shall pay all court costs incurred below and likely to be incurred on appeal as estimated by the chancery clerk. In all cases where the appellant is appealing the denial of an order of protection from domestic abuse by a county court, the appellant shall not be required to pay any costs associated with the appeal, including service of process fees, nor shall the appellant be required to appeal in forma pauperis. In such circumstances, the court may assess costs of the appeal to the appellant if the court finds that the allegations of abuse are without merit and the appellant is not a victim of abuse. Where the issuance of a mutual protection order is the basis of the appeal, the appellant may be entitled to reimbursement of appellate costs paid to the court as a matter of equity if the chancery court finds that the mutual order was issued by the lower court without regard to the requirements of Section 93-21-15(3).

(5) The appellate procedures set forth in this section for appeals from justice, municipal and county courts shall control if there is a conflict with another statute or rule.

(6) Any party aggrieved by the issuance or denial of a final order of protection by a chancery court shall be entitled to appeal the decision. The appeal shall be governed by the Mississippi Rules of Appellate Procedure and any other applicable rules or statutes.

HISTORY: Laws, 2019, ch. 460, § 3, eff from and after July 1, 2019.

§ 93-21-16. Full faith and credit for certain protective orders issued in other jurisdictions.

(1) A protective order from another jurisdiction issued to protect the applicant from abuse as defined in Section 93-21-3, or a protection order as defined in Section 93-22-3, issued by a tribunal of another state, or a similar order by a state military court as defined in Section 33-13-151, shall be accorded full faith and credit by the courts of this state and enforced in this state as provided for in the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act.

(2) For purposes of enforcement by Mississippi law enforcement officers, a protective order from another jurisdiction, or a protection order as defined in Section 93-22-3 and issued by a tribunal of another state, is presumed to be valid if it meets the requirements of Section 93-22-7.

(3) For purposes of judicial enforcement of a protective order issued in another jurisdiction, or a protection order as defined in Section 93-22-3 and issued by a tribunal of another state, an order is presumed valid if it meets the requirements of Section 93-22-5(4). It is an affirmative defense in any action seeking enforcement of a protective order issued in another jurisdiction, or a protection order as defined in Section 93-22-3 and issued by a tribunal of another state, that any criteria for the validity of the order is absent.

HISTORY: Laws, 1999, ch. 434, § 1; Laws, 1999, ch. 552, § 1; Laws, 2004, ch. 566, § 11; Laws, 2007, ch. 589, § 6, eff from and after July 1, 2007; Laws, 2020, ch. 463, § 3, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment, in (1), inserted "or a similar order by a state military court as defined in Section 33-13-151."

§ 93-21-21. Knowing violation of protection orders, court-approved consent agreements or bond conditions issued by Mississippi or foreign courts is misdemeanor or contempt; penalties.

(1) Upon a knowing violation of (a) a protection order or court-approved consent agreement issued pursuant to this chapter, (b) a similar order issued by a foreign court of competent jurisdiction for the purpose of protecting a person from domestic abuse, or a similar order by a state military court as defined in Section 33-13-151, or (c) a bond condition imposed pursuant to Section 99-5-37, the person violating the order or condition commits a misdemeanor punishable by imprisonment in the county jail for not more than

six (6) months or a fine of not more than One Thousand Dollars ($1,000.00), or both.

(2) Alternatively, upon a knowing violation of a protection order or court-approved consent agreement issued pursuant to this chapter or a bond condition issued pursuant to Section 99-5-37, the issuing court may hold the person violating the order or bond condition in contempt, the contempt to be punishable as otherwise provided by applicable law. A person shall not be both convicted of a misdemeanor and held in contempt for the same violation of an order or bond condition.

(3) When investigating allegations of a violation under subsection (1) of this section, law enforcement officers shall utilize the uniform offense report prescribed for this purpose by the Office of the Attorney General in consultation with the sheriff's and police chief's associations. However, failure of law enforcement to utilize the uniform offense report shall not be a defense to a crime charged under subsection (1) of this section.

(4) In any conviction for a violation of a domestic abuse protection order as described in subsection (1) of this section, the court shall enter the disposition of the matter into the corresponding uniform offense report.

(5) Nothing in this section shall be construed to interfere with the court's authority, if any, to address bond condition violations in a more restrictive manner.

HISTORY: Laws, 1981, ch. 429, § 11; Laws, 2003, ch. 430, § 1; Laws, 2012, ch. 514, § 5, eff from and after July 1, 2012; Laws, 2020, ch. 463, § 4, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment, in (1), inserted "or a similar order by a state military court as defined in Section 33-13-151."

OPINIONS OF THE ATTORNEY GENERAL

Any individual violating a restraining order or injunction issued under the Protection from Domestic Abuse Law or a similar order from a foreign court may be arrested without a warrant and charged with a violation of § 93-21-21. Dantin, Apr. 26, 2002, A.G. Op. #02-0212.

ARTICLE 3.

DOMESTIC VIOLENCE SHELTERS.

Sec.
93-21-109. Records withheld from public disclosure.
93-21-125. Communications of victims of domestic violence, sexual assault, stalking and human trafficking with advocates deemed confidential.

§ 93-21-109. Records withheld from public disclosure.

Records maintained by domestic violence shelters, except the official minutes of the board of directors of the shelter, and financial reports filed as required by statute with the board of supervisors or municipal authorities or any other agency of government, shall be withheld from public disclosure under the provisions of the Mississippi Public Records Act of 1983.

HISTORY: Laws, 1983, ch. 502, § 5; Laws, 2002, ch. 337, § 3; Laws, 2014, ch. 509, § 7, eff from and after July 1, 2014; Laws, 2020, ch. 402, § 2, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment deleted former (2), which related to civil liability and penalty for disclosure of certain information that could identify a victim of domestic violence by employees, contractors, volunteers or agents of domestic violence shelters; deleted former (3), which prohibited employees, contractors, volunteers or agents of domestic violence shelters from compelled testimony in civil matters or surrender of records regarding victim of domestic violence without permission of victim, and permitted in camera review of materials under certain circumstances; and deleted former (4), which prohibited a resident or staff member of domestic violence shelter from compelled disclosure of physical location of the shelter. See now § 93-21-125 for similar provisions.

§ 93-21-113. Reporting criminal acts or omissions to law enforcement personnel; filing charges against offender; plea bargaining.

OPINIONS OF THE ATTORNEY GENERAL

This section provides prosecutors with the authority to offer, in plea bargaining with an individual charged with a first offense of simple domestic violence, to allow such an offender to enter into an agreement whereby they receive counseling in lieu of further prosecution. It is a matter within the prosecutor's discretion whether to make such an offer to a defendant, based upon the facts of each case. If an offender agrees to receive the recommended counseling in lieu of further prosecution, and in fact successfully completes the counseling, the prosecutor shall pass the case to the file. Dawson, Jan. 23, 2004, A.G. Op. 04-0019.

§ 93-21-115. Donations from municipalities to support local shelters.

OPINIONS OF THE ATTORNEY GENERAL

Although a Drug Task Force may not make a donation of funds or property, the counties and cities making up the Task Force may contribute funds to a domestic violence shelter as they see fit under Sections 19-5-93(o) and 93-21-115. Pacific, June 28, 1995, A.G. Op. #95-0329.

A policy of a municipality establishing a lower fee for use of municipal facilities for charitable benefits than charged for other private uses would be impermissible. As an alternative, however, certain statutes authorize municipal donations to certain types of qualified organizations. Baum, Feb. 17, 2006, A.G. Op. 06-0048.

§ 93-21-125. Communications of victims of domestic violence, sexual assault, stalking and human trafficking with advocates deemed confidential

(1) **Definitions.** The following definitions apply in this section:

(a) "Advocate" means an employee, contractor, agent or volunteer of a victim service provider whose primary purpose is to render services to victims of domestic violence, sexual assault, stalking, or human trafficking and who has completed a minimum of twenty (20) hours of training in the areas of dynamics of victimization, substantive laws relating to domestic violence, sexual assault, stalking and human trafficking, crisis intervention techniques, communications skills, working with diverse populations, an overview of the state's criminal and civil justice systems, information regarding pertinent hospital procedures, victim compensation, and information regarding state and community resources for victims of domestic violence, sexual assault, stalking, human trafficking, or mandatory training required by the Office Against Interpersonal Violence, whichever is greater. "Advocate" also means a person employed by a victim service provider who supervises any employee, contractor, agent or volunteer rendering services. The term advocate also means a third party (i) present to further the interest of the victim in receiving services; (ii) necessary for the transmission of the communication; or (iii) to whom disclosure is reasonably necessary to accomplish the purposes for the victim seeking services.

(b) "Confidential victim communications" means all information, whether written or oral, collected, transmitted or shared between a victim and an advocate in the course of that relationship and maintained by the victim service program in connection with services requested, utilized or denied. "Confidential victim communications" includes, but is not limited to, information received or given by the advocate in the course of the working relationship, advice, records, reports, notes, memoranda, working papers, electronic communications, case files, history, and statistical data that contain personally identifying information.

(c) "Domestic violence" means any alleged misdemeanor or felony act of domestic violence as defined by Section 99-3-7, knowing violation of a domestic abuse protection order under Section 93-21-21, or incidence of abuse as defined by Section 93-21-3(a), whether or not a civil or criminal action arises as a result of the alleged violation. The term "domestic violence" also includes any pattern of behavior or coercive control resulting in physical, emotional or psychological harm to a victim committed by a spouse or former spouse of the victim, a person with whom the victim lives or lived as a spouse, a person related as parent, child, grandparent, grandchild, or someone similarly situated to the victim, a person having a child in common with the victim, or a person with whom the victim has or had a dating relationship.

(d) "Human trafficking" means any alleged criminal act in violation of Section 97-3-54.1, whether or not a civil or criminal action arises as a result of the alleged violation.

(e) "Personally identifying information" means any information for or about an individual, including information likely to disclose the location or identity of a victim of domestic violence, sexual assault, stalking, or human trafficking, including: (i) a first or last name; (ii) a home or other physical address; (iii) contact information, including a postal, email or internet protocol address; (iv) a social security number; or (v) any other information, including, but not limited to, date of birth, racial or ethnic background, marital status, children, disability, or religious affiliation that would serve to identify the individual.

(f) "Services" includes, but is not limited to, crisis hotlines, operation of safe homes and shelters, assessment and intake, case management, advocacy, individual and peer counseling, support in medical, legal, administrative, and judicial systems, transportation, relocation, and crisis intervention.

(g) "Sexual assault" means any alleged violation of Section 97-3-65, 97-3-95, 97-5-23, 97-5-24, 97-5-41, 97-29-3 or 97-29-7, whether or not a civil or criminal action arises as a result of the alleged violation.

(h) "Stalking" means any alleged violation of Section 97-3-107 or 97-45-15, whether or not a civil or criminal action arises as a result of the alleged violation.

(i) "Victim" means a person alleging domestic violence, sexual assault, stalking, or human trafficking, who consults a victim advocate for the purpose of obtaining, for the person, advice, counseling, or other services concerning mental, emotional, or physical injuries suffered as a result of the offense, whether or not services are actually received.

(j) "Victim service provider" means an organization whose primary purpose or mission is to provide services to victims of domestic violence, sexual assault, stalking, or human trafficking. This term includes umbrella organizations that have specific victim service programs as part of its organization. Any provisions regarding confidentiality only extend to the specific program providing victim services and not to the entire organization.

(2) **Confidential victim communications protected from disclosure.** (a) No advocate shall disclose any confidential victim communication or personally identifying information of a victim or be compelled to testify to or surrender any confidential victim communications or personally identifying information in any civil or criminal proceeding or in any legislative or administrative proceeding, without the prior informed, written and time-limited consent of the victim, except in the following circumstances: (i) where disclosure is mandated under Section 43-21-353, Section 43-47-7, Section 43-47-37, Section 97-3-54.1(4), Section 97-5-51, Section 97-29-49, or any other applicable provision of state or federal law; (ii) where failure to disclose is likely to result in imminent risk of serious bodily harm or death of the victim or another person, or when the victim dies or is incapable of giving consent and disclosure is required for an official law enforcement investigation or criminal proceedings regarding the cause of the victim's death or incapacitation; or (iii) where disclosure is required pursuant to a valid court order.

(b) Upon motion of a party in a civil action or of the defendant in a criminal action, the court may compel disclosure of certain confidential victim communications or personally identifying information, if the court determines, after in-camera review, that all of the following conditions are met: (i) the information sought is relevant and material evidence of the facts and circumstances involved in an alleged criminal act which is the subject of a criminal proceeding; (ii) the probative value of the information outweighs the harmful effect, if any, of disclosure on the victim, the advocacy relationship and provision and receipt of services; and (iii) the information cannot be obtained by reasonable means from any other source.

The court shall document its determination to compel disclosure in writing or place its findings into the record of the proceeding. This proceeding does not entitle the requesting party to examine the records unless those records are made available by the court. The proceeding set in this paragraph (b) shall not supersede the provisions of Section 99-43-25 with regard to the protection of facts that could divulge the identity, residence, or place of employment of a victim.

(c) A release of information without the consent of the victim shall be limited in scope to the minimum amount necessary to comply with any mandated disclosure. The advocate or victim service provider must make reasonable attempts to notify the victim of the disclosure, to whom the disclosure was made, and for what purpose.

(d) A victim service program may not require consent to release of information as a condition of service to a victim.

(e) A legal guardian, guardian ad litem or parent may consent to release of confidential information for a victim who, due to incompetency, incapacity or minority, is incapable of consenting, except that no person who has committed or is alleged to have committed a crime against the victim shall be granted this authority.

(3) Under no circumstances shall the location of a shelter, safe house or transitional housing for victims of domestic violence, sexual assault, stalking, or human trafficking be disclosed in any civil or criminal proceeding.

(4) A communication remains confidential for purposes of this section if made in the presence of or communicated to third parties: (a) present to further the interest of the victim in receiving services; (b) necessary for the transmission of the communication; or (c) to whom disclosure is reasonably necessary to accomplish the purposes for the victim is seeking services.

(5) Nonpersonally identifying information or data in the aggregate regarding services to clients and nonpersonally identifying demographic information may be disclosed by victim service providers for purposes of submitting reports, obtaining funding, conducting evaluation or complying with data collection requirements.

(6) An advocate or victim service provider who makes any disclosure in violation of this section shall be civilly liable to the person whose personal information was disclosed in the amount of Ten Thousand Dollars ($10,000.00), plus any compensatory damages that the individual may have suffered as the result of the disclosure.

(7) Nothing in this section shall affect any confidentiality or privilege provisions established by law or court rule.

(8) Nothing in this section shall prevent the sharing of law enforcement or

court-generated information gathered in furtherance of an investigation or prosecution of a crime.

(9) Nothing in this section shall prevent the disclosure of confidential victim communication by any governmental or private participant of a meeting of a multidisciplinary child protection team created pursuant to Section 43-15-51, such disclosures to be governed by Section 43-15-51(5).

(10) Nothing in this section shall prevent an advocate from a governmental organization from sharing victim information with necessary persons to accomplish the duties of the job or to satisfy statutory or constitutional requirements of disclosure, including, but not limited to, a right to due process in connection with an educational or other property interest.

(11) Nothing in this section shall be construed as creating a cause of action for damages against the state or any of its agencies, officials, employees or political subdivisions.

HISTORY: Laws, 2020, ch. 402, § 1, eff from and after July 1, 2020.

CHAPTER 22.

UNIFORM INTERSTATE ENFORCEMENT OF DOMESTIC VIOLENCE PROTECTION ORDERS

Sec.
93-22-5. Judicial enforcement of order.
93-22-7. Nonjudicial enforcement of order.
93-22-11. Immunity.

§ 93-22-5. Judicial enforcement of order.

(1) A tribunal of this state shall enforce the terms of a valid foreign protection order, including terms that provide relief that a tribunal of this state would lack power to provide but for this section. A tribunal of this state shall enforce a valid foreign protection order issued by a tribunal, whether the order was obtained by independent action or in another proceeding, if it is an order issued in response to a complaint, petition, or motion filed by or on behalf of an individual seeking protection. A tribunal of this state may not enforce an order issued by a tribunal that does not recognize the standing of a protected individual to seek enforcement of the order. In a proceeding to enforce a foreign protection order, the tribunal shall follow the procedures of this state for the enforcement of protection orders.

(2) A tribunal of this state shall enforce the provisions of a valid foreign protection order which governs custody and visitation. The custody and visitation provisions of the order must have been issued in accordance with the jurisdictional requirements governing the issuance of custody and visitation orders in the issuing state.

(3) A tribunal of this state may not enforce under this chapter an order or provision of an order with respect to support.

(4) A protection order is valid if it:

(a) Identifies the protected individual and the respondent;

(b) Is in effect at the time enforcement is being sought;

(c) Was issued by a tribunal that had jurisdiction over the parties and matter under the law of the issuing state; and

(d) Was issued after the respondent was provided with reasonable notice and had an opportunity to be heard before the tribunal issued the order or, in the case of an order ex parte, the respondent was given notice and afforded an opportunity to be heard within a reasonable time after the issuing of the order, consistent with the rights of the respondent to due process.

(5) A person authorized under the law of this state to seek enforcement of a foreign protection order establishes a prima facie case for its validity by presenting an order valid on its face.

(6) Absence of any of the criteria for validity of a foreign protection order is an affirmative defense in an action seeking enforcement of the order.

(7) A tribunal of this state may enforce the provisions of a mutual foreign protection order which favor a respondent only if:

(a) The respondent filed a written pleading seeking a protection order from the tribunal of the issuing state; and

(b) The tribunal of the issuing state made specific findings in favor of the respondent.

HISTORY: Laws, 2004, ch. 566, § 3, eff from and after July 1, 2004.

§ 93-22-7. Nonjudicial enforcement of order.

(1) A law enforcement officer of this state, upon determining that there is probable cause to believe that a valid foreign protection order exists and that the order has been violated, shall enforce the order as if it were the order of a tribunal of this state. Presentation of a protection order that identifies both the protected individual and the respondent, and on its face is in effect at the time enforcement is being sought, constitutes probable cause to believe that a valid foreign protection order exists. For the purposes of this section, the protection order may be inscribed on a tangible medium or may have been stored in an electronic or other medium if it is retrievable in perceivable form. Presentation of a certified copy of a protection order is not required for enforcement.

(2) If the protection order is not presented, the officer may consider other information in determining whether there is probable cause to believe that a valid foreign protection order exists.

(3) If a law enforcement officer of this state determines that an otherwise valid foreign protection order cannot be enforced because the respondent has not been notified or served with the order, the officer shall inform the respondent of the order and make a reasonable effort to serve the order upon the respondent. After informing the respondent and serving the order, the officer shall allow the respondent a reasonable opportunity to comply with the order before enforcing the order.

(4) Registration or filing of an order in this state is not required for the enforcement of a valid foreign protection order under the provisions of this chapter.

HISTORY: Laws, 2004, ch. 566, § 4, eff from and after July 1, 2004.

§ 93-22-11. Immunity.

This state or a local governmental agency, or a law enforcement officer, prosecuting attorney, clerk of court, or any state or local governmental official acting in an official capacity, is immune from civil and criminal liability for an act or omission arising out of the registration or enforcement of a foreign protection order or the detention or arrest of an alleged violator of a foreign protection order if the act or omission is done in good faith in an effort to comply with this chapter.

HISTORY: Laws, 2004, ch. 566, § 6, eff from and after July 1, 2004.

CHAPTER 27.

UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT

ARTICLE 1.

GENERAL PROVISIONS.

§ 93-27-101. Short title.

Cross References — Except to the extent jurisdiction is precluded by this chapter, chancery court has jurisdiction over guardianship or conservatorship for resident, see § 93-13-104.

ARTICLE 2.

JURISDICTION.

§ 93-27-201. Initial child-custody jurisdiction.

JUDICIAL DECISIONS

I. Under Current Law.

2. Jurisdiction.

Denial of a wife's motion to set aside a chancery court's prior judgments and orders regarding custody and visitation was appropriate because the issue of the chancery court's jurisdiction to make an initial custody determination was res judicata as it was established in prior judgments, including one that was affirmed on appeal and two that the wife did not appeal. Abercrombie v. Abercrombie, 282 So. 3d 763, 2019 Miss. App. LEXIS 406 (Miss. Ct. App. 2019).

§ 93-27-207. Inconvenient forum.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.

Chancery court considered each of the statutory factors and substantial evidence supported the court's decision that California was the more convenient forum to resolve this custody matter; since the children were in California, that state would best protect them should there be any domestic violence in the future, plus the children had been living in California for 17 months and the great distance between Mississippi and California would cause an undue burden should Mississippi retain jurisdiction. McGrew v. McGrew, — So. 3d —, 2020 Miss. App. LEXIS 626 (Miss. Ct. App. Nov. 17, 2020).

CHAPTER 31.

SUPPORTING AND STRENGTHENING FAMILIES ACT

Sec.

93-31-3. Delegation of powers regarding care and custody of child to attorney-in-fact; revocation or withdrawal; duration of power of attorney.
93-31-5. Statutory form of power of attorney to delegate parental or legal authority.

§ 93-31-3. Delegation of powers regarding care and custody of child to attorney-in-fact; revocation or withdrawal; duration of power of attorney.

(1)(a) A parent or legal custodian of a child, by means of a properly executed power of attorney as provided in Section 93-31-5, may delegate to another willing person or persons as attorney-in-fact any of the powers regarding the care and custody of the child other than the following:

(i) The power to consent to marriage or adoption of the child;

(ii) The performance or inducement of an abortion on or for the child; or

(iii) The termination of parental rights to the child.

(b) A delegation of powers under this section does not:

(i) Change or modify any parental or legal rights, obligations, or authority established by an existing court order;

(ii) Deprive any custodial or noncustodial parent or legal guardian of any parental or legal rights, obligations, or authority regarding the custody, visitation, or support of the child; or

(iii) Affect a court's ability to determine the best interests of a child.

(c) If both parents are living and neither parent's parental rights have been terminated, both parents must execute the power of attorney. If a noncustodial parent is absent or unknown, the custodial parent must complete the affidavit contemplated under Section 93-31-5 and attach it to the power of attorney.

(d) A power of attorney under this chapter must be facilitated by either a child welfare agency that is licensed to place children for adoption and that is operating under the Safe Families for Children model or another charitable organization that is operating under the Safe Families for Children model. A full criminal history and child abuse and neglect background check must be conducted on any person who is not a grandparent, aunt, uncle, or sibling of the child if the person is:

(i) Designated or proposed to be designated as the attorney-in-fact; or

(ii) Is a person over the age of fifteen (15) who resides in the home of the designated attorney-in-fact.

(2) A power of attorney executed under this chapter shall not be used for the sole purposes of enrolling a child in a school to participate in the academic or interscholastic athletic programs provided by that school or for any other unlawful purposes, except as may be permitted by the federal Every Student Succeeds Act (Public Law 114-95).

(3) The parent or legal custodian of the child has the authority to revoke or withdraw the power of attorney authorized by this section at any time. Upon the termination, expiration, or revocation of the power of attorney, the child must be returned to the custody of the parent or legal custodian.

(4) Until the authority expires or is revoked or withdrawn by the parent or legal custodian, the attorney-in-fact shall exercise parental or legal authority on a continuous basis without compensation for the duration of the power of attorney.

(5) The execution of a power of attorney by a parent or legal custodian does not, in the absence of other evidence, constitute abandonment, desertion, abuse, neglect, or any evidence of unfitness as a parent unless the parent or legal custodian fails to take custody of the child or execute a new power of attorney after the one-year time limit, or after a longer time period as allowed for a serving parent, has elapsed. Nothing in this subsection prevents the Department of Human Services or law enforcement from investigating allegations of abuse, abandonment, desertion, neglect or other mistreatment of a child.

(6) When the custody of a child is transferred by a power of attorney under this chapter, the child is not considered to have been placed in foster care and the attorney-in-fact will not be subject to any of the requirements or licensing regulations for foster care or other regulations relating to out-of-home care for children and will not be subject to any statutes or regulations dealing with the licensing or regulation of foster care homes.

(7)(a) "Serving parent" means a parent who is a member of the Armed Forces of the United States, including any reserve component thereof, or the National Oceanic and Atmospheric Administration Commissioned Officer Corps or the Public Health Service of the United States Department of Health and Human Services detailed by proper authority for duty with the Armed Forces of the United States, or who is required to enter or serve in the active military service of the United States under a call or order of the President of the United States or to serve on state active duty.

(b) A serving parent may delegate the powers designated in subsection (1) of this section for longer than one (1) year if on active-duty service or if scheduled to be on active-duty service. The term of delegation, however, may not exceed the term of active-duty service plus thirty (30) days.

(8)(a) A power of attorney under this chapter must be filed in the youth court of the county where the minor child or children reside at the time the form is completed, and the clerk of the youth court will not impose or collect a filing fee. The filing is informational only, and no judicial intervention shall result at the time of filing.

(b) The power of attorney must be entered into the Mississippi Youth Court Information Delivery System (MYCIDS) under Section 43-21-351, and must be administratively reviewed by the youth court judge or referee, or a person designated by the youth court judge or referee, to ensure the safety of the child or children who are the subjects of the power of attorney one (1) year after the date of execution.

HISTORY: Laws, 2016, ch. 501, § 2, eff from and after July 1, 2016; Laws, 2019, ch. 464, § 17, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment rewrote (1)(c), which read: "If both parents are living and have shared custody as a matter of law or under an existing court order, both parents must execute the power of attorney"; deleted "as soon as reasonably possible" at the end of (3); and added (8).

§ 93-31-5. Statutory form of power of attorney to delegate parental or legal authority.

(1) The following statutory form of power of attorney to delegate parental or legal authority as authorized by Section 93-31-3 is legally sufficient:

Statutory Form for Power of Attorney to

Delegate Parental or Legal Custodian Powers

1. "I certify that I am the parent or legal custodian of:

(Full name of minor child)	(Date of birth)
(Full name of minor child)	(Date of birth)
(Full name of minor child)	(Date of birth)

who is/are minor children.

2. I designate as the attorney-in-fact for each minor child named above:

(Full name of attorney-in-fact)

(Street address, city, state and zip code of attorney-in-fact)

(Home phone, work phone and cell phone of attorney-in-fact) as the attorney-in-fact of each minor child named above.

3. [Complete either Section 3(a) or 3(b)].

(a) I delegate to the attorney-in-fact all of my power and authority regarding the care, custody and property of each minor child named above, including, but not limited to, the right to enroll the child in school, inspect and obtain copies of education records and other records concerning the child, the right to attend school activities and other functions concerning the child, and the right to give or withhold any consent or waiver with respect to school activities, medical and dental treatment, and any other activity, function or treatment that may concern the child. This delegation shall not include the power or authority to consent to marriage or adoption of the child, the performance or inducement of an abortion on or for the child, or the termination of parental rights to the child.

OR

(b) I delegate to the attorney-in-fact the following specific powers and responsibilities (write in):

____

[If Section 3(b) is completed, Section 3(a) does not apply.]

This delegation shall not include the power or authority to consent to: marriage or adoption of the child, performing or inducing an abortion on or for the child, or the termination of parental rights to the child.

(c) ________The reason or reasons for this transfer of custody is as follows:

____

[Complete either 4(a) or 4(b)]

4.

(a) This power of attorney is effective for a period not to exceed one (1) year, beginning ________, 20____, and ending________, 20____ I reserve the right to revoke this authority at any time.

OR

[Complete either 4(a) or 4(b)]

(b) I am a serving parent as defined in Section 93-31-3, Mississippi Code of 1972. My active-duty service is scheduled to begin on ________, 20____, and is estimated to end on ________, 20____. I reserve the right to revoke this authority at any time. I acknowledge that in no event may this delegation of power last more than one (1) year or the term of my active duty plus thirty (30) days, whichever is longer.

By:

____

(Parent/Legal Custodian signature)

5. I hereby accept my designation as attorney-in-fact for the minor child/children specified in this power of attorney.

____

(Attorney-in-fact signature)

6. AFFIDAVIT OF FACILITATING AGENCY UNDER SECTION 93-31-3(1)(d), Mississippi Code of 1972

I, ________________ of (Agency)________________, do hereby certify that I have properly vetted the proposed designated attorney-in-fact as required under Section 93-31-3(1)(d), Mississippi Code of 1972, and find no criminal or child abuse or neglect history.

____
(Agency representative signature)

____
Name of facilitating agency

State of ______________
County of ______________

ACKNOWLEDGEMENT

Before me, the undersigned, a Notary Public, in and for said county and state on this day________ of ________, 20____, personally appeared ______________(Name of facilitating agency and person signing as facilitator), ______________(Name of Parent/Legal Custodian) and ______________(Name of Attorney-in-fact), known to me to be the persons who executed this instrument and who acknowledged to me that each executed the same as his or her free and voluntary act and deed for the uses and purposes set forth in the instrument.

Witness my hand and official seal the day and year above written.

____
(Signature of notarial officer)
(Seal, if any)______________________
(Title and Rank)

My commission expires:________"

7. If the custodial parent alleges that the noncustodial parent is absent, unknown, or that the location of the noncustodial parent is unknown, an affidavit must be completed and attached to the power of attorney. The following statutory form is sufficient:

Affidavit of Custodial Parent
STATE OF ______________
COUNTY OF ______________

I hereby certify that I am the custodial parent of the child(ren)_who are the subject of the power of attorney to which this affidavit is attached. I further certify that the location of the noncustodial parent, ______________ is unknown to me or that the identity of the father is unknown to me (insert here if the father is unknown) ______________ or that the noncustodial parent is unavailable (state here the reason unavailable): ______________________________.

SO SWORN, this the ________ day of ________, 20____

____
Custodial Parent

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned authority in and for the aforementioned jurisdiction, the within named person who first presented proof of identity.

THIS, the ________ day of ________,

20____.

____

NOTARY PUBLIC

My commission expires: ________

(2) A power of attorney, affidavit of facilitating agency, and affidavit of custodial parent that substantially conform to the forms set forth in this section are legally sufficient if properly completed and acknowledged.

(3) A revocation of a power of attorney under this chapter must be filed with the youth court where the original power of attorney was filed, and the clerk of the youth court shall not impose or collect a filing fee. The following statutory form is sufficient to revoke a power of attorney to delegate parental or legal custodial powers that was granted under Section 93-31-3:

Statutory Form for Revocation of

Power of Attorney to Delegate Parental or

Legal Custodial Powers

1. "I certify that I am the parent or legal custodian of:

____________________________ ______________

(Full name of minor child) (Date of birth)

____________________________ ______________

(Full name of minor child) (Date of birth)

____________________________ ______________

(Full name of minor child) (Date of birth)

who is/are minor children.

2. On the day________ of _________, 20____, I designated as the attorney-in-fact of each minor child named above:

____

(Full name of attorney-in-fact and DOB)

____

(Street address, city, state and zip code of attorney-in-fact)

3. I hereby certify that I am revoking said Power of Attorney to Delegate Parental or Legal Custodial Powers and am requesting that my child or children named above be immediately returned to my legal and physical care, custody and control and that I resume all legal rights and responsibilities associated with my child or children.

ACKNOWLEDGEMENT

Before me, the undersigned, a Notary Public, in and for said county and state on this day________ of ________, 20____, personally appeared ________________(Name of Parent/Legal Custodian), known to me to be the person who executed this instrument and who acknowledged to me that he or she executed this instrument as his or her free and voluntary act and deed for the uses and purposes set forth in the instrument.

Witness my hand and official seal the day and year above written.

____
(Signature of notarial officer)

____
(Signature of notarial officer)
(Seal, if any)

____
(Title and Rank)

My commission expires:__________"

HISTORY: Laws, 2016, ch. 501, § 3, eff from and after July 1, 2016; Laws, 2019, ch. 464, § 18, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment, in (1), added "as the attorney-in-fact for each minor child named above" in 2, added 3(c), added 6, added "(Name of facilitating agency and person signing as facilitator)" in the Acknowledgement, and added 7; rewrote (2), which read: "A power of attorney that substantially conforms to the form set forth in this section is legally sufficient if the form is properly completed and acknowledged"; and added (3).

TITLE 95.

TORTS

Chapter 15. Liability Exemption for Report of Suspicious Activity or Behavior. 95-15-1

CHAPTER 3.

NUISANCES

§ 95-3-29. Immunity of certain agricultural operations from nuisance actions.

OPINIONS OF THE ATTORNEY GENERAL

Section 17-1-3 prohibits requiring the issuing of building permits and payment of building permit fees for farm buildings or other farm structures. Section 17-2-7 prohibits the enforcement of building codes, including the International Building Codes, on farm structures. However, such exemptions do not include farm residences. Cummings, Sept. 29, 2006, A.G. Op. 06-0436.

CHAPTER 5.

TRESPASS

§ 95-5-10. Cutting trees without consent of owner.

JUDICIAL DECISIONS

I. UNDER CURRENT LAW.

6. Damages.

In a case that was removed from a Mississippi chancery court to the bankruptcy court after a debtor declared Chapter 11 bankruptcy, the bankruptcy court found that the debtor was liable under Miss. Code Ann. § 95-5-10 to pay an adjacent landowner $66,383.94 in damages, $3,642.50 in reforestation costs, and litigation costs because an agent he hired cut down trees that belonged to the landowner; although the landowner was entitled to recover twice the value of the trees that were cut and reforestation costs, he was not entitled to additional damages under § 95-5-10 because the debtor acted with the honest and mistaken belief that he owned the property where the trees were cut. Baird v. Crosthwait (In re Crosthwait), — B.R. —, 2018 Bankr. LEXIS 2917 (Bankr. N.D. Miss. Sept. 25, 2018), aff'd, — F. Supp. 3d —, 2019 U.S. Dist. LEXIS 153086 (N.D. Miss. 2019).

§ 95-5-23. To fences, bars, gates, bridges, buildings.

JUDICIAL DECISIONS

50. Practice and procedure.

Chancellor sufficiently addressed a report by a guardian ad litem (GAL) report because the chancellor's ruling was consistent with the GAL's recommendation. Furthermore, the chancellor did not err or abuse its discretion by giving the GAL's opinion some weight because the GAL's testimony did not indicate bias, prejudgment of the case, or an improper view of his role, but simply reflected that, based on the evidence gathered during the investigation, the GAL had a definite opinion as to which parent was to have custody. Barbaro v. Smith, 282 So. 3d 578, 2019 Miss. App. LEXIS 322 (Miss. Ct. App. 2019).

OPINIONS OF THE ATTORNEY GENERAL

If a surety meets its obligation by having a defendant in court at the appointed time, the surety should be discharged from any further obligation, such as insuring the defendant pays a fine. Mark, December 23, 1998, A.G. Op. #98-0778.

CHAPTER 9.

LIABILITY EXEMPTION FOR VOLUNTEERS AND SPORTS OFFICIALS

§ 95-9-1. Definitions; liability exemption for volunteers; exceptions.

OPINIONS OF THE ATTORNEY GENERAL

Volunteer firefighters are protected under state "Good Samaritan" law. Beech, April 10, 1991, A.G. Op. #91-0287.

Depending on particular facts of relationship between volunteer firefighters and governing body, volunteer firemen can, in certain limited circumstances, be considered employees for purpose of workers' compensation; County can contribute funds, equipment, training, etc. to municipal volunteer fire department which provides services in county; however, county does not have authority to provide workers compensation coverage for volunteer firefighters for municipality because these firefighters are not employees of county. Chaffin Sept. 23, 1993, A.G. Op. #93-0510.

A parochial school and/or church would come within the definition of a "qualified volunteer" and as such would enjoy the exemptions from liability provided by Miss. Code Ann. § 95-9-1 when providing the use of its buildings or other real property to the Red Cross, Catholic Charities, or other qualified volunteer organizations during an emergency. Compretta, March 16, 2007, A.G. Op. #07-00146, 2007 Miss. AG LEXIS 106.

CHAPTER 11.

LIABILITY EXEMPTION FOR EQUINE AND LIVESTOCK ACTIVITIES

§ 95-11-1. Legislative findings and intent.

OPINIONS OF THE ATTORNEY GENERAL

Section 95-11-1 et seq. protects the board of supervisors of Pearl River County and the Pearl River County Fair Board from liability for the use of the Pearl River County Arena by private rodeo bull/steer owners conducting bull riding training sessions using rough stock bulls and/or steers while practicing in the arena. Carroll, Nov. 22, 2005, A.G. Op. 05-0464.

§ 95-11-3. Definitions.

OPINIONS OF THE ATTORNEY GENERAL

"Equine activity sponsors" as defined include individuals, groups, clubs, partnerships, and corporations which sponsor, organize, or provide facilities for equine activities; however, neither counties nor municipalities fall within the definition of an equine activity sponsor under the Act. Spell, May 15, 1998, A.G. Op. #98-0213

CHAPTER 15.

LIABILITY EXEMPTION FOR REPORT OF SUSPICIOUS ACTIVITY OR BEHAVIOR

Sec.
95-15-1. Limitation of liability for report of suspicious activity or behavior.

§ 95-15-1. Limitation of liability for report of suspicious activity or behavior.

(1) The School Safety Center within the State Department of Education shall develop and implement a statewide media campaign to prioritize and raise awareness for the "See Something, Say Something Act" established under this section, as well as the national campaign established by the United States Department of Homeland Security, as a measure to encourage good faith reporting of suspicious activity to law enforcement agencies. The media campaign shall inform the public of the protections provided by the law in addition to useful tools, resources, appropriate local law enforcement agencies and emergency services contact information, and partnering entities, including, the Mississippi Office of Homeland Security, the Mississippi Department of Public Safety and the Mississippi Department of Mental Health. In addition to the media campaign, the School Safety Center shall also make this information available on the Internet website of the State Department of Education.

(2) A person who in good faith makes a report of suspicious activity or behavior shall be immune from civil and criminal liability for the making of the report if the report is based on objectively reasonable suspicion.

(3) For purposes of this section, "report of suspicious activity or behavior" means any communication to a law enforcement officer or agency or other appropriate authority of the behavior or activity of another person if the report is made with the reasonable belief that the behavior or activity constitutes or is in furtherance of an act of terrorism.

(4) This section does not apply to the intentional making of a report known to be false, including a violation of Section 97-35-47, or to a report made with reckless disregard for the truth of the report.

HISTORY: Laws, 2016, ch. 427, § 1, eff from and after passage (approved Apr. 18, 2016); Laws, 2019, ch. 427, § 8, eff from and after July 1, 2019.

Editor's Notes — Laws of 2019, ch. 427, § 1, provides:

"SECTION 1. This act shall be entitled and may be cited as the 'Mississippi School Safety Act of 2019.' "

Amendment Notes — The 2019 amendment added (1) and redesignated former (1) through (3) as (2) through (4).